



## CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

June 29, 2015

The Honorable City Council  
Palo Alto, California

### **Adoption 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**

#### **RECOMMENDATION**

Staff and the Planning and Transportation Commission recommend that the City Council adopt the Ordinance Deleting Section 18.42.110 of Chapter 18.42 of Title 18 of the Palo Alto Municipal Code and Adopting a New Section 18.42.110 Pertaining to the Siting and Permitting of Wireless Communications Facilities (Attachment A).

Staff also recommends that the Council direct the City Manager or designee to suspend the Anthem Telecomm contract to study construction of a large standalone tower in light of the changed legal and technological landscape.

#### **BACKGROUND**

The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. It is expected that carriers will continue to roll out new facilities in Palo Alto to accommodate the rapidly growing need for increased capacity and speed. Wireless telecommunications facilities (WCF) are regulated by federal, state and local laws. Federal law significantly limits the City's ability to regulate WCFs. Under federal law, a local agency's decisions cannot have the effect of prohibiting the provision of wireless service or unreasonably discriminating among wireless service providers. Also, under federal law, the City may not regulate the placement, construction or modification of wireless communications facilities on the basis of radio frequency (RF) emissions, so long as the facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

Despite federal limitations, cities historically have retained ability to regulate the aesthetic of WCFs, including factors such as height and property line setbacks. However, federal law developments continue to erode that ability.

#### The Spectrum Act

The latest federal law governing WCFs was adopted in 2012 as part of the 2012 Middle Class Tax Act. This federal legislation contained Section 6409, now referred to as the Spectrum Act,

and codified at 47 U.S.C. § 1455. The Spectrum Act was intended to facilitate the telecommunication industry's rapid deployment of wireless infrastructure by requiring local governments to approve any application that seeks to modify an existing wireless telecommunication facility that does not "substantially change" the existing facility.

As the Spectrum Act did not contain specific definitions, the implementation of this Section initially was open to interpretation by each local government. Furthermore, while the Act states that a local government cannot deny and shall approve an eligible facility request, it provides no guidance as to the required process or time limits in which a local government has to act. To bridge this gap, the FCC recently promulgated rules which include necessary definitions, processing requirements, timelines and remedies for applications that seek to modify an existing wireless telecommunication facility in accordance with the Spectrum Act.

The FCC's procedural rules went into effect on April 9, 2015. The FCC rules are subject to several legal challenges, though it appears they will remain in effect during the litigation. These FCC rules are binding on local governments, unless and until a court orders otherwise.

## **DISCUSSION**

Section 6409 of the Spectrum Act provides that the City "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455(a)(1).) Section 6409 defines "eligible facilities request" as "any request for modification of an existing wireless tower or base station that involves –

- (a) collocation of new transmission equipment;
- (b) removal of transmission equipment; or
- (c) replacement of transmission equipment."

(47 U.S.C. § 1455 (a)(2).) The statute does not define any of the other terms, most importantly "substantially change", nor does it explain the process the City may use to evaluate whether an application qualifies for federal protection under this section.

On December 17, 2014, the FCC adopted regulations implementing Section 6409, codified at 47 C.F.R. § 1.40001, which took effect on April 9, 2015. The regulations were intended to clarify which types of WCF projects are covered by the Spectrum Act. The regulations define terms that were used but not defined in the Spectrum Act, including "eligible support structure", "existing", "substantial change" and "wireless tower". The regulations give applicants the right to assert in writing that a project is covered by the Spectrum Act.

If the project falls within the definition of an eligible facilities request, the City must act on it within 60 days from the date an application is submitted, unless the City determines the request is not covered by the Spectrum Act. The 60 day time frame may be tolled by the City for incomplete applications, provided the City notifies applicant within 30 days of submittal. Failure of the City to act on the application within the allowed timeframe results in the automatic approval of such application.

To implement the Spectrum Act and the FCC rules, the City has prepared an updated ordinance. The ordinance establishes a straightforward permitting process for WCF modification requests covered under the Spectrum Act. The new ordinance also codifies other processing time rules (commonly known as the “Shot Clock”) that have been adopted since the City adopted its original ordinance, clarifies its applicability to Distributed Antenna Systems (DAS) facilities and establishes a tiered permitting system than favors collocations over new towers.

### Summary of Proposed Ordinance

The City’s proposed ordinance divides wireless permits into three categories: Tiers 1, 2 and 3. To meet the strict timelines established by the new rules, the ordinance would create a new Tier 1 WCF permit. This permit would only apply to collocations that meet the definition of “eligible facilities” under the Spectrum Act and would provide a streamlined review by the Director. The Director’s purview would be limited to ensuring that the project meets the definition of an existing “eligible facility” and that it does not defeat existing camouflage mitigations. Under federal law, the City has limited discretion to deny these types of requests.

The Tier 2 WCF permit would apply to collocations that do not fit within the Spectrum Act. These types of WCF projects would typically involve towers on private property where the height of the tower is proposed to increase by more than ten percent, towers in the public right of way proposed to be increased by ten feet or more or projects that will be adding more than four cabinets. The City’s current Code expresses a preference for collocations. The new Code continues this by creating a Tier 2 permit applicable only to collocations. Such projects would still require architectural review and are appealable like other architectural review permits.

The Tier 3 WCF permit would apply to all new WCF applications. The ordinance grants the City the most discretion over applications for new facilities by requiring both architectural review and conditional use permit findings. While the old ordinance only required CUPs for certain new facilities, the new ordinance recommends this more robust review for all new facilities. The reason for this is that once a facility is permitted it gains “eligible facility” status and will be permitted to increase by right under the Spectrum Act. Also having a consistent process for all new facilities is easier to administer. Tier 3 permits may be appealed pursuant to the process used for architectural review and conditional use permits.

The proposed ordinance also codifies the processing time for the three different permit types, establishes application requirements, incorporates development standards, imposes key conditions of approval and mandates removal of abandoned equipment.

Table 1 below summarizes the key process changes proposed by the Ordinance.

Table 1: Wireless Facility Permit Process (Proposed)

Type of Wireless Facility	Timeline for City Decision (Prescribed by Federal Law)	Deemed Granted Remedy (Prescribed by Federal Law)	Type of Permit Required / Findings
<b>Collocations or modifications/replacements of wireless transmission equipment at an existing wireless tower or base station that do not “substantially change the physical dimensions of the existing wireless tower or base station.” (Section 6409(a) Facilities)</b>	<ul style="list-style-type: none"> <li>• 60 days after application is submitted</li> <li>• Can extend by mutual agreement</li> </ul>	Yes; applicant must provide notice (city may challenge in court)	<ul style="list-style-type: none"> <li>• Tier 1 WCF Permit – Director review; non-appealable</li> <li>• Findings:                             <ol style="list-style-type: none"> <li>1. The applicant proposes an Eligible Facilities Request;</li> <li>2. The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and</li> </ol> </li> </ul>
<b>Other collocations that “substantially change the physical dimensions of the existing wireless tower or base station.”</b>	<ul style="list-style-type: none"> <li>• 90 days after application submitted</li> </ul>	No	<ul style="list-style-type: none"> <li>• Tier 2 WCF Permit – Director review; appealable per PAMC 18.77.070</li> <li>• Findings = Compliance with WCF Development Standards and Architectural review findings in Section 18.76.020(d)</li> </ul>
<b><u>New pole/building facade/roof mounted WCF’s</u></b>	<ul style="list-style-type: none"> <li>• 150 days after application submitted</li> </ul>	No	<ul style="list-style-type: none"> <li>• Tier 3 WCF Permit – Director review; appealable pursuant to PAMC 18.77.070 and 18.77.060</li> <li>• Required findings:                             <ol style="list-style-type: none"> <li>1. Compliance with WCF Development Standards</li> <li>2. Architectural review findings in Section 18.76.020(d) and</li> <li>3. Conditional use permit findings in Section 18.76.010(c)</li> </ol> </li> </ul>

Planning and Transportation Commission Review

The Planning and Transportation Commission reviewed this item on May 13, 2015. Their review focused on four main issues. First, they were in favor of transitioning from a locational approach to a tiered approach based on type of facility. This tiered approach is more in line with current federal telecommunications law and favors wireless collocations. Second, they discussed permitting requirements. They suggested that the ordinance be modified to clarify that if the applicant did not meet the findings, the permit would not be issued. This clarification has been added. Also, the Commission recommended that the ordinance put some reasonable parameters on the time, location, and noticing requirement (600ft) of the required community hearing for Tier 2 and 3 permits. This has also been added to the ordinance. Third, the Commission reviewed the development standards and conditions of approval. Based on public comment, they recommended including a condition of approval verifying that the RF emissions of the WCF complied with FCC regulations. This has been added to the ordinance. Fourth, the

Commission reviewed the appeal process and found it to be in line with other land use appeals. Finally, the Commission noted that many residents no longer have land lines and that adopting a clear process for installing WCF's, and establishing a citywide level of service, is an important residential safety issue. See Attachment B for the PTC's verbatim minutes.

#### Connection to Wireless Master Plan

In response to residents' concerns about the AT&T DAS project (2012), the City Council directed staff to retain the services of a qualified wireless communications firm to assess the City's wireless communication needs, propose a system to meet those needs, and develop a strategy and incentives to encourage the use of this system and collocation over other alternatives. An RFP was issued in October 2012, and the selected consultant, Anthem Telecom, is currently in the early data collection phase of the work.

At this juncture, staff sees little benefit in moving forward with this work effort at this point. Given the legal landscape it would be challenging at best to require carriers to all locate in a particular location. Further, any tower that would be of sufficient size to house all carriers' needs well into the future would have to be well over 50 feet and it would be extremely challenging to come up with a public site that would have no visual impacts. Finally, given the aesthetic impacts of large standalone towers, in urban locations such as Palo Alto, carriers have begun utilizing smaller DAS systems which do not pose the same aesthetic issues as the older generation facilities.

For these reasons, staff recommends suspending the Anthem Telecom contract until next fiscal year to better assess whether it would be worthwhile to pursue a single stand alone tower.

#### **Policy Implications**

In recognition of the growing reliance on WCFs to provide personal wireless services to residences and businesses, Policy B-13 states "Support the development of technologically-advanced communication infrastructure and other improvements that will facilitate the growth of emerging telecommunications industries." On the other hand, Policies L-7 and L-12 of the City's existing Comprehensive Plan recognizes the need to evaluate changes in land use in the context of regional needs, overall City welfare and objectives as well as desires of neighbors and the preservation of neighborhood character. This ordinance attempts to strike a balance between these important policies by encouraging collocations over new installations and by requiring camouflaging and other stealth siting.

#### **Resource Impact**

These Zoning Code changes can be implemented with existing resources. Cost recovery fees for processing Tiered WCF permits will be included in the Municipal Fee Schedule.

#### **Environmental Review**

This ordinance is exempt for the provisions of the California Environmental Quality Act pursuant to CEQA Guideline Section 15061, 15301, 15302 and 15305 in that it simply establishes a comprehensive permitting scheme.

**ATTACHMENTS:**

- A: Wireless Communications Facility Ordinance (PDF)
- B: P&TC Excerpt Minutes from May 13, 2015 (PDF)

Department Head: Molly Stump, City Attorney



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.

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(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 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.

(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 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.

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- (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**

(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;

(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;

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(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.
- (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**

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.

NOT YET APPROVED

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:

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City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

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NOT YET APPROVED

Senior Asst. City Attorney

City Manager

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Director of Planning &  
Community Environment

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**Planning and Transportation Commission**  
**Verbatim Minutes**  
**May 13, 2015**

**EXCERPT**

**Public Hearing**

**FCC Telecommunications:** Recommendation to the City Council Repealing PAMC Section 18.42.110 of Chapter 18.42 of the Palo Alto Municipal Code and Adopting a New Section 18.42.110 Pertaining to Siting and Permitting of Wireless Communications Facilities. Environmental Determination: Exempt Pursuant to CEQA Guidelines Sections 15061(b)(3) and Section 15301 (Class 1). **CONTINUED FROM APRIL 29, 2015**

Chair Tanaka: Ok, so I'm going to call the meeting back to order. We're going to begin Item 2, which is the Federal Communications Commission (FCC) Telecommunications. So it's a recommendation to the City Council repealing the Palo Alto Municipal Code (PAMC) Section 18.42.110 of the Chapter 18.42 of the PAMC and adopting a new Section 18.42.110. Does staff have a presentation like to review?

Cara Silver, Senior Assistant City Attorney: Thank you, Chair Tanaka and Commission; Cara Silver, Senior Assistant City Attorney. What you have before you is a proposed amendment to the City's Wireless Telecommunications Ordinance. We have an existing ordinance on the books; however, that ordinance has not been refreshed lately and there have been some amendments to a federal law which require us to take a look at that ordinance and make some, make some modifications. So the telecommunications field is one that it has been evolving over the years and historically there have been limitations on cities' abilities to regulate on this area. Cities are preempted by a broad range of federal laws that are designed to promote the installation of telecommunications and encourage the proliferation and use of wireless devices. Also there is an overlay of state law that also limits somewhat the city's ability to regulate these facilities and also grants extra rights to carriers to locate facilities primarily in the right of way without much local control. So it's been a frustrating area of law for many, many cities. That being said there is some discretion that the City has; traditionally we've been able to regulate the aesthetic impacts of towers and cell sites. However, even that area of local control is starting to be eroded.

So the latest federal action in this area is known as the Spectrum Act. And that was adopted in 2012 as a rider to a tax bill. And what that law does is it requires local governments to approve applications modifying an existing wireless communications facility that do not substantially alter the existing facility. The problem with that particular law was that there were no definitions attached to it so it's been very difficult for cities to implement. It also did not have time limits attached although it required that these applications be processed expeditiously. So there's been some confusion in this area for a while and what has happened is the FCC stepped in and adopted a set of regulations. Those regulations were just recently adopted. They went into effect April 9, 2015, and they actually are under legal challenge right now. A group of cities have filed a federal court action challenging the ability of the FCC to adopt these regulations. We don't expect to get a decision on that case for quite some time and the regulations are in effect until that litigation is resolved. So what those regulations do is they define critical terms that are, that are used in the Spectrum Act. They provide guidance on which projects, which wireless communication facility colocation projects are governed by the Spectrum Act, and they provide a sixty day period to act on those covered projects.

We've attached an ordinance that implements the Spectrum Act and what we also have done is that we've just taken a fresh look at our existing ordinance and what we're proposing is that the existing ordinance be restructured. And so restructured in a way where we have three different tiers of facilities. So the first tier will be the colocations that are governed by the Spectrum Act. And that would, those would be the projects that are, are required to be processed in 60 days and given that short time frame, what we are essentially recommending is a ministerial type of permit. That that be issued by the Planning staff at a staff level. There not be any appeals for that type of permit, but that there be

1 conditions in the ordinance that require these facilities to comply with various laws and be camouflaged  
2 and be appropriately screened and that type of thing. So that would be tier one level of review.  
3

4 Tier two would apply to other colocations that do not fall under the tier one. The tier one covered  
5 colocations are and let me back up, colocation is an existing facility that can either be a separate pole  
6 that where the only purpose for that pole is to house an antenna or it can be some other kind of a like a  
7 building with an antenna on it and if another carrier or another antenna wants to locate on those two  
8 facilities that's a colocation. So it's two different antennas on housed on one base station or facility. So  
9 the tier one colocations are permitted if the facility does not grow essentially by 10 percent or more. So  
10 then the tier two would be anything that would be greater than the 10 percent increase. And those  
11 would require more review. They would require both architectural review or they would require an  
12 architectural review and they would go through a more developed process. There would be Architectural  
13 Review Board (ARB) review and then they could be appealed to the Council as well.  
14

15 Then finally we have the tier three facilities which are everything else. And these will most likely be  
16 actually new facilities. And what we want to do with these new facilities is give them extra scrutiny  
17 because under the Spectrum Act they then receive this special status and will be allowed to grow by an  
18 extra 10 percent if they are not or by an extra 10 percent by right under the Spectrum Act. And so we  
19 want to make sure they are located in an appropriate area and that they are screened and architecturally  
20 designed and all of that. So those will be given the highest level of review. They'll go through  
21 architectural review. They'll also go through a Conditional Use Permit (CUP) and then they will be  
22 reviewed by the Planning Commission and by the Council on appeal.  
23

24 So what we would like from you is a couple of things. First of all we'd like your input on this tiered  
25 approach. Do you find that it's straightforward? Is it something that's understandable by carriers and  
26 can it be easily implemented? We would also like your input on the development standards and  
27 conditions of approval that are contained in the ordinance and again these development standards and  
28 conditions of approval will apply to all, all projects, all wireless facilities. And then also we'd like your  
29 input on the appeal process that we have outlined. So with that that concludes my presentation and I'm  
30 happy to answer questions.  
31

32 Chair Tanaka: Thank you. So we're now going to go to the public comment on this item. Vice-Chair I  
33 think we have a couple of cards, do you want to read the names? Each speaker would have five  
34 minutes.  
35

36 Vice-Chair Fine: Our first speaker, I'm not sure what order we got these; our first speaker is Arthur Keller.  
37 Ah, thanks. Herb Borock.  
38

39 Herb Borock: Good evening, Chair Tanaka and Commissioners. I want to speak a little bit about the  
40 process regarding the regulation issued by the FCC. The mention of that in this staff report to my  
41 recollection is the first time there's been anything written about it advising any legislative body in this City  
42 about that regulation whether there was a draft regulation promulgated for people to comment upon and  
43 to give the City Council and its boards and commissions an opportunity to make comments so the Council  
44 on behalf of the City could comment upon it. And this is the first evidence that there's been litigation  
45 about the regulation that was issued as a final regulation and as happened in the past when cities have  
46 challenged something in court the Council has often given opportunity to decide whether to participate in  
47 that litigation.  
48

49 The issue of wireless communication facilities has been a controversial one in the community on two  
50 occasions that I can remember the City Council decided to hear appeals of proposed wireless facilities,  
51 one at the President Hotel on University Avenue and the other at the Little League field on Middlefield  
52 Road in South Palo Alto. At the time of the previous Planning Director Curtis Williams the Council had  
53 given direction to the Planning staff to study the siting of wireless facilities on the City's utility  
54 substations. I don't recall anything coming of that in the form of a final staff report about that. And  
55 currently under the Utilities Department although being implemented by the Information Technology (IT)  
56 Chief Information Officer (CIO) with the team from both departments there's a Wireless Master Plan

1 being developed. So there clearly is a lot of interest of the City Council on the issue and that's why I'm  
2 surprised I don't recall the issue of potential regulations and how they would affect the City coming  
3 before the Council on a timely basis so they could work, participate in the development of those  
4 regulations.  
5

6 Once before on another issue the staff did not see fit to place on the Council's agenda a particular issue  
7 of concern to the community and that was high speed rail. The first Environmental Impact Report (EIR)  
8 on the high speed rail connection between the San Francisco Peninsula and the Central Valley was never  
9 placed on the Council's agenda and nobody on the staff or the Council made comments on that Draft  
10 Environmental Impact Report (DEIR) and as you know from the EIR process that means the City could  
11 not be a litigant to challenge anything in the EIR. They eventually the Council attempted to file a friend  
12 of the court brief in that litigation, but under the previous City Attorney Gary Baum the court ruled that it  
13 was not an appropriate use of the friend of the court process, that it was not the appropriate type of  
14 brief.  
15

16 So from my point of view I believe that it's difficult at this stage to go back and change what was done or  
17 not done before, but certainly the Council should be made aware of what the text of the regulation is and  
18 what the litigation is that's going on so that you can make a decision as to what we can or cannot do and  
19 what it wants to do or not want to do. I would think that the various departments involved in this not  
20 just the City Attorney's Office, but the Utilities Department, IT Department have an obligation to keep the  
21 City Council informed about this issue considering the extent to which the Council has been involved in  
22 the wireless issues and considering also the fact that it's been an area of controversy in the City. Thank  
23 you.  
24

25 Vice-Chair Fine: Mr. Arthur Keller.  
26

27 Arthur Keller: Thank you. So there are three, three comments that I have. Thank you, Chair Tanaka and  
28 Commissioners. The first thing is that the ordinance should spell out a notice requirement indicating the  
29 radius of the project that should be noticed when there is a wireless communication facility either added  
30 or expanded. And that notice may vary depending on whether it's tier one, tier two, or tier three, but  
31 that notice requirement should be spelled out in the ordinance.  
32

33 The second thing is that if the wireless communication facility is built on top of or on the façade of a  
34 occupied building that the permit should not be finalized with respect to the wireless communication  
35 facility unless there's independent measurement of the wireless communication facilities as installed and  
36 operating as to ensure that the emissions meet FCC regulations with respect to the adjacent occupied  
37 space. That actually that somebody is actually a reason to measure. Somebody goes in there, measures  
38 that it meets the allowed amount of emissions. And I'm not sure whether that should also be in terms of  
39 open, elsewhere in the facility where people are walking underneath, but certainly where it's occupied  
40 space, office building or residential or a church or the like that's occupied for long periods that's  
41 important.  
42

43 The third thing is really minor. I always thought that colocation was spelt with one L and that's why it's  
44 spelt with a, pronounced with a long O as opposed to collocation, that's how I would pronounce it if it  
45 were two L's. Thank you.  
46

47 Chair Tanaka: Seeing that we have no other cards we're going to close the public hearing for this item  
48 and bring it to the Commission for questions. And so the way we're going to try to do this meeting is  
49 we're going to start with just general Questions and Answers (Q&A) to make sure everyone's on the  
50 same page. We have a list of four issues that staff would like us to address and what I'd like to do in a  
51 similar format to last meeting is we'll add to this list of specific issues that the Commission wants to talk  
52 about beyond the four that staff has brought up and so we'll add this to the list. So want to start off first  
53 with if there are any questions that Commissioners have for staff. So you hit your lights and I see two  
54 lights so the first one is Commissioner Rosenblum.  
55

1 Commissioner Rosenblum: Yes, I apologize in advance because I'm going to have to run to catch a plane.  
2 So I'll ask, I'll stay for the next 10 minutes or so. Was there input that you received from experts on  
3 either side of this issue? So to me the people on one side are those who install cellular facilities. So  
4 understanding if the nose requirements, timing, the shot clock, etcetera, if this adheres to their normal,  
5 their normal need for implementation notice, revisions, etcetera. And on the other side of the issue there  
6 are consumer etcetera advocates and environmental advocates who need time to review and understand  
7 the implications of the project, etcetera. So what research or data was collected to create not the tiers,  
8 but more the shot clock and notice requirements?  
9

10 Ms. Silver: Thank you, Commissioner Rosenblum. So the, we didn't do a community outreach meeting  
11 for this particular ordinance. Sometimes we do do that. We thought that since this ordinance went, is  
12 required to go to the Planning Commission that that would be a good starting point for some outreach  
13 and we may do additional outreach following this meeting. With respect to noticing we have, we're  
14 suggesting a 600 foot radius which is our common noticing procedures and I believe that's what we have  
15 followed for other facilities and so we've in our old ordinance so we've carried that forward. And then  
16 your third question?  
17

18 Commissioner Rosenblum: It's the timings.

19  
20 Ms. Silver: Yes, the (interrupted)

21  
22 Commissioner Rosenblum: Times for submission and appeal.  
23

24 Ms. Silver: Right, so that comes from what we call the shot clock rules which are in several different sets  
25 of regulations, but they are in the 60 day time period that we're most concerned with is in the latest FCC  
26 order that I referenced.  
27

28 Chair Tanaka: Commissioner Michael.  
29

30 Commissioner Michael: So Mr. Borock said a number of interesting things, one of which was to make  
31 reference to the Wireless Master Plan. so one question I have since I haven't reviewed that recently or I  
32 can't even remember what the contents are in specific, but to the extent that there's this new ordinance  
33 how would you propose to cross reference into the Wireless Master Plan the, the key elements of the  
34 proposed ordinance or in the alternative would you want to formulate some of the provisions of the  
35 ordinance to make use of the Wireless Master Plan to suggest that you would qualify for a certain tier  
36 one, two, or three based on how it's addressed and the policies in the Wireless Master Plan? So that's  
37 one question.  
38

39 Then the other question is again going back to I think Herb Borock was very helpful in asking whether,  
40 what are the lessons learned from some of these two prior experiences. And I wasn't involved with the  
41 first one, but the Little League tower was one that generated considerable public interest. We had a full  
42 house that evening and it's kind of as an example of there's a lot of sometimes controversy around a  
43 specific item, but very little attention is paid to the planning that would sort of determine the disposition  
44 of the specific items in the future. And so the public isn't kind of engaged when the plans are proposed,  
45 but it may affect them much more powerfully than the specific item does where they come out and tell us  
46 what they think.  
47

48 But what I noted with the huge outpouring of public engagement which I thought was wonderful, was  
49 part of the group was opposed and another part was in favor. And the part that was opposed kind of  
50 raised issues about the height of the tower, which would get you into tier two or tier three under this  
51 thing. They also thought that the appearance, the aesthetic aspect was subject [unintelligible] but that  
52 was sort of an ARB issue not so much Planning Commission. And then they raised questions about safety  
53 and [unintelligible] of emissions and what have you that I don't feel qualified to, to determine. But the  
54 other group raised some other issues about safety and they said a lot of people don't have landlines and  
55 if they need to make a 911 call or if you've got a minor child and a contact or needing to contact a parent  
56 or vice-versa or you've got various day to day practical things that you've got to get done how do you get

1 them done? You get them done with your wireless connectivity and if you can't do that then you're  
2 unable to do them in this modern society. So there's issues of safety on both sides, there's issues of the  
3 aesthetics and height limit are clearly something which requires review, but my question was in the  
4 controversies in the past we have are those factored into this ordinance in such a way that those people  
5 would be happier with this ordinance in effect than if it weren't?  
6

7 Ms. Silver: Thank you, Commissioner Michael. We, we have certainly attempted to take those previous  
8 cases into account when fashioning the ordinance. That's one of the reasons why we have tiered the  
9 permits. We thought that it makes sense to try to limit public or hurdles and regulatory hurdles and try  
10 to expedite facilities that comply with the, that are well, first of all that are required by law and also that  
11 comply with our standard procedures for screening and camouflaging and various aesthetic concerns.  
12 And so typically facilities that are co-located in a light standard or in a utility pole tend to be more  
13 acceptable to the community. The ball field example was an exception to that, but there have been  
14 hundreds of these facilities rolled out in this area and generally the aesthetic concerns are minimized  
15 when the facility is integrated into a light standard or a utility pole. So those are the tier one facilities.  
16 On the other hand, on the other end of the spectrum the stand alone facilities sometimes they are  
17 camouflaged trees, those types of facilities tend to be more controversial and that's why of course they,  
18 we thought that it would be better for those to go through a higher level of review both architectural and  
19 CUP review.  
20

21 Then with respect to the Wireless Master Plan I know that we have hired a consultant to take a look at  
22 siting a large tower where many different multiple carriers can co-locate. And I think that in connection  
23 with this ordinance when we bring this ordinance to the Council assuming it moves forward that we will  
24 talk to the Council about whether they want to continue along that plan in light of the recent change in  
25 law and in light of what we have seen as the favored practice of carriers wanting to roll out smaller sites  
26 and the Distributed Antenna Sites (DAS) sites. We've been seeing more DAS located rather than these  
27 big stand-alone facilities. So we will certainly have that conversation at the Council level and we'll see  
28 what comes of it.  
29

30 Chair Tanaka: Ok, I see no other lights for questions so let's move on to the discussion issues. So we  
31 have four listed by staff. That's currently listed on the screen right now. I haven't heard of any specific  
32 issues that from Commissioners that want to be discussed. If there are please hit your lights and I'll add  
33 it to the list here. Commissioner Michael.  
34

35 Commissioner Michael: So I've had the experience from time to time of being in a place where there isn't  
36 very good cell coverage or your cell phone gets dropped and for example, once I was in a city which in  
37 Central California, Cambria, and they had a local ordinance that basically prohibited the wireless antenna  
38 and so it was just a big dead zone. There's no cell phone coverage at all in a significant area. So that  
39 was a, and that was a problem because I had to meet somebody and I couldn't find that person and they  
40 couldn't find me and I'd just ridden my bicycle 100 miles and it was kind of poignant.  
41

42 But anyway so my question is and maybe this is a Comp Plan issue, which is currently being updated and  
43 revised and would there be a policy in the Comp Plan that would make sense to suggest that we have as  
44 a goal that there be a certain level of potential connectivity or signal strength, wireless signal strength  
45 throughout the City or that there would be not less than a certain quality of connectivity or access in any  
46 of the residential or commercial areas. There might be sort of a different standard. Because for many  
47 people this is of critical importance and certainly want to respect the aesthetics and other issues, but I  
48 think that increasingly we live in a world where if you need to communicate or to connect it may be of  
49 practical or other significant urgency and so should there be a policy that suggests that the City commits  
50 to a certain level of service to facilitate that and maybe that could be part of the Wireless Master Plan or  
51 whatever.  
52

53 Chair Tanaka: Ok, so I added that to the list. Are there any other issues? Hit your lights. Ok. So we  
54 only have five issues then; so one is the signal strength of the City by Commissioner Michael and then  
55 the four from staff. Since Commissioner Michael just talked about the signal strength issue anyone that  
56 wishes to speak on that please hit your lights. Commissioner Downing.



1  
2 Commissioner Downing: I strongly support those comments and I do feel that it is a little bit odd, I mean  
3 I understand that there's a lot of things that we can't foresee and we'd want to give discretion on, but I  
4 am a little bit troubled that as far as I can tell I mean it just says that approval for these tier three  
5 projects is just up to the Director. And there's, that seems difficult for the Director because there's  
6 nothing in here to give guidance on when he should or shouldn't approve. And I mean I think it would  
7 be useful (interrupted)  
8

9 Chair Tanaka: Commissioner Downing maybe can you save those comments for the second when we talk  
10 about the tiered approach? We're talking about the first one which is signal strength throughout the City.  
11

12 Commissioner Downing: Well but that's what I mean.  
13

14 Chair Tanaka: Ok.  
15

16 Commissioner Downing: I'm saying that it shall be reviewed by the Director and then there should be  
17 something here which says if this improves signal strength in a place that really needs it, if this is a safety  
18 issue, then that's a reason to approve. So I'm supportive of those comments.  
19

20 Chair Tanaka: Thank you. Any other Commissioner that wants to weigh in on this topic that  
21 Commissioner Michael brought up? Ok, seeing no lights I'm going to comment on it myself. So actually  
22 I, I think this is actually a really good idea. I think cellular coverage is kind of moved from a luxury item  
23 to a must have, to something that has many benefits besides just entertainment; there's safety and  
24 emergency reasons why we want to have it. So I think that makes sense. I think it actually makes sense  
25 also to have this as part of the Comp Plan. It's kind of a modern update of the Comp Plan back when the  
26 Comp Plan was looked at extensively this wasn't something that was probably at the top of the line, but  
27 today it is and people really want this kind of signal strength. So I do support that Commissioner  
28 Michael's comments on this.  
29

30 Seeing no other Commissioners weighing in on this let's move on to the second topic. And maybe before  
31 we start maybe if staff can just frame it up for us and then we'll talk about the [unintelligible] tiered  
32 approach. If there's any specific, I mean you kind of talked about it, but anything specific about that  
33 issue that you want us to address?  
34

35 Ms. Silver: Yeah, so in the previous version of the ordinance or actually the current version of the  
36 ordinance the level of review is based on locations. And what we are doing now is transitioning over to a  
37 tiered approach where it would be based on really the type of facility that is being proposed. And so  
38 what we're asking from you is whether that approach makes sense.  
39

40 Chair Tanaka: Ok Commissioners, hit your lights if you have any comments on this tiered approach. In  
41 favor, not in favor? Staff wants to know. Commissioner Michael.  
42

43 Commissioner Michael: I think the tiered approach makes perfect sense.  
44

45 Chair Tanaka: Commissioner Alcheck.  
46

47 Commissioner Alcheck: I agree.  
48

49 Chair Tanaka: I also agree with that. Ok, any other comments? Otherwise we'll move on. Ok, input on  
50 permitting requirements; can staff frame that up for us?  
51

52 Ms. Silver: So the permitting requirements are contained in Section D of the ordinance. That includes all  
53 of the application materials that are requested and we want to just make sure that we have a  
54 comprehensive list. I did make a note of Mr. Keller's comments about the a notice requirement and there  
55 is a notice requirement for tiers two and three that neighbors within 600 feet be given notice and that  
56 the applicant provide a or preform a public meeting. We're not recommending a public meeting for the

1 tier one because those are essentially ministerial permits and so we don't want to give the community a  
2 false expectation that there's some discretion involved in those permits. So we do have a notice  
3 requirement for tiers two and three.

4 Also Mr. Keller suggested that for wireless facilities built on top of occupied facilities that a report be  
5 issued that the Radio Frequency (RF) emissions comply with FCC requirements following the installation  
6 of the facility. And I personally think that's a great idea and I would recommend incorporating that also  
7 into the requirements.  
8

9 Chair Tanaka: Ok Commissioners, does anyone want to comment on this item, this topic? Commissioner  
10 Downing.  
11

12 Commissioner Downing: I think kind of to my previous point so I mean there are quite a few  
13 development standards here. There are a lot of conditions that you need to meet. My concern is though  
14 that you could meet all these conditions, but it still seems like you could get rejected anyway, right?  
15 That's kind of the way I read this. And so for me personally like I don't know how we want to do that  
16 whether or not that says and there's a favorable finding if there's a safety issue I don't know how to put  
17 this in, but in some way like I don't I would like to avoid another situation like the ballpark where that  
18 had been going on for years and years because even though they were doing everything they were  
19 supposed to do people were complaining. Like I would like that, I would like this process to be more  
20 expedient, right? And it is a safety concern. More and more of us don't have landlines. So.  
21

22 Chair Tanaka: Commissioner Michael.  
23

24 Commissioner Michael: So in general I think the application requirements, the permitting requirements  
25 are pretty straightforward. The one question that I would have is where you probably expect the most  
26 controversy is for the tier two and tier three permits and this issue of the community meeting it isn't  
27 defined as to time of day or place of holding such meeting and that may be something that you want to  
28 clarify so that there's no dispute as to the convenience. You know you could do it at 7:00 in the morning  
29 and no one would be awake or you could do it late at night and or during working hours or does it have  
30 to be convenient to the neighborhood to which the location in which the proposed installation might be or  
31 would it be in a public facility? So you might do something to make that more clear.  
32

33 Chair Tanaka: Ok, seeing no other lights on this topic, oh, actually Commissioner Gardias.  
34

35 Commissioner Gardias: Thank you, Mr. Chairman. I'm thinking what to add, what sort of value. So  
36 pretty much just going back to the tiers, right, and just listening to my colleagues and some comments  
37 that were made here, right? So current tiers are based pretty much on the physical dimensions of the  
38 change, but then just there are some other dimensions of change: safety, strength of the emissions, we  
39 talked about this, right, strength of the signal. So pretty much within the same, within the same physical  
40 structure giving technology there could be a number of other changes that public or engineering may be  
41 concern and would like to just have more strict review than just pretty much simple review and approval  
42 process. So for this reason when I'm just looking at the tiers that they're lack certain, certain other  
43 aspects beyond the physical dimensions. Just thinking about this I would just make a recommendation to  
44 enhance the tiers, the definition of the tiers with the change in some, in some in nonphysical aspects.  
45 Thank you.  
46

47 Chair Tanaka: Ok. So Commissioner Gardias has made a interesting suggestion. I don't know if anyone  
48 has any comments on that. If so hit your lights otherwise we'll move on. Ok, so we're going to move on.  
49 So let's go to the third item which is input on development standards and conditions of approval. Does  
50 staff want to just frame that up?  
51

52 Ms. Silver: Yes, thank you. Those sections of the ordinance are contained in I and J and similar to the  
53 application requirements these are requirements that would apply to all applications and in particular we  
54 have set it up this way to apply to tier one facilities which because of the short timeframe for review  
55 there is a concern that these could be deemed approved under the new legislation in a 60 day period and

1 so we wanted to have some codified requirements that would apply to those facilities in particular that  
2 run the risk of being deemed approved if they're not acted on in that short time period.  
3

4 Chair Tanaka: Ok. Anyone want to comment on this item as framed up by staff? I see no lights so it  
5 looks like the Commission has no input on this item. Ok, let's go to the last item which is input on appeal  
6 process. Staff can you frame that up?  
7

8 Ms. Silver: Yes, thank you. So the appeal process again is as we mentioned before the tier one we're not  
9 recommending an appeal process. Tier two we are recommending that that go through the standard  
10 ARB process which ultimately can be appealed to the Council. And then tier three which are for the new  
11 facilities and those are for the facilities that we don't necessarily want to encourage, those go through a  
12 more robust process with ARB, Planning and Transportation Commission (PTC), and then Council on  
13 appeal.  
14

15 Chair Tanaka: Ok, do any Commissioners have any comments on this? Hit your lights. Commissioner  
16 Downing.  
17

18 Commissioner Downing: I don't have an issue with this appeal process. I think the appeal process makes  
19 sense. I think though what I would like to again it's the same point. What I'd like to see is what are  
20 these commissions supposed to find, right? Because like this came to PTC and it was just like well... you  
21 know, you could come up with anything as a reason to approve or not approve it and there is nothing in  
22 the text to go take us one way or the other. I don't know.  
23

24 Ms. Silver: So let me respond to that. The findings that need to be made are the standard architectural  
25 review findings and the standard CUP findings. And so those are contained in other sections of the code.  
26 And so we've referenced the code sections but we haven't imported those particular findings into this  
27 ordinance. We've just referenced that process. And that's the way we typically write these types of  
28 ordinances. If there's an existing permitting scheme in process or in the code already we just reference  
29 it.  
30

31 Commissioner Downing: Ok, so in those sections is it clear that if you meet the outlined requirements  
32 then you will be approved?  
33

34 Ms. Silver: Yes.  
35

36 Commissioner Downing: Ok.  
37

38 Ms. Silver: So those are those the 18 or so ARB findings all of those findings have to be made or the  
39 project will be denied.  
40

41 Commissioner Downing: That I understand, but what I want information on is the reverse. If we find  
42 that everything is in compliance, right? Like all these conditions are met, do we still have a right to  
43 refuse? That's the question.  
44

45 Ms. Silver: No. You don't.  
46

47 Commissioner Downing: Ok.  
48

49 Ms. Silver: You have to approve it. And so that's a good point, maybe the language can be clarified to  
50 reflect that.  
51

52 Commissioner Downing: Right and I just bring that up because I see things here like shall comply with  
53 the following standards, right? Or the application process you will deliver like the following including,  
54 right? But none of this is, none of this makes clear that this is sufficient. It just says it's necessary. You  
55 know what I'm saying? So that's the clarity I'm going for because otherwise I think it's really hard for the  
56 Director to make any sort of reasoned response to a lot of angry neighbors. I think it's just really hard if

1 you don't have solid things to point to and say it's met all the requirements, we thought really hard about  
2 these requirements, this is it. And to that extent I'm happy with these requirements being more strict,  
3 but I would just like it to be clear that if you do meet them you're good to go.

4 Chair Tanaka: Do Commissioners have comments on this? Any other comments on this item? Ok, I have  
5 actually, I'm going to go backwards a bit because I there's one item I saw on Page 9. This is for the  
6 third item, input on development standards and commissions approval. So this is commission's approval  
7 section, which is Part 3. It's more of a question for staff. So we're probably ok here. It's the  
8 indemnification section and so this section is saying indemnify the City, its City Council, its officers,  
9 employees, and agents. And I'm just curious so does that also include like the Planning Commission and  
10 ARB? I'm just, it probably is, but I want to make sure.

11  
12 Ms. Silver: Yes, it does, although typically the Planning Commission and ARB members are not  
13 individually sued in these types of lawsuits. Generally it's just the City that's sued, but if they were, yes,  
14 the carrier would have to take on the defense.

15  
16 Chair Tanaka: Ok, I just want to make sure. Ok, so guys I think we've kind of weighed in on this topic  
17 and it's the time in the meeting now to decide on what to do. We had some good suggestions about  
18 signal strength throughout the City by Commissioner Michael. Both Commissioner Downing and myself  
19 also thought that was good. I think that on the tiered approach most folks that was a good, good idea.  
20 Gardias thought that maybe perhaps we could do something around just some of the nonphysical  
21 aspects. On the permitting requirements I don't think there was any specific things although I think  
22 Downing, Commissioner Downing and Commissioner Michael also just thought that was good. Nothing,  
23 we didn't have much input on the development standards. And appeal process actually I do want to  
24 comment on that as well. Commissioner Downing said it should be clear and I agree. It should, we  
25 should try to make the process to provide our residents and visitors with reliable quality cellular service  
26 makes a lot of sense. So I do also support that comment. Does anyone want to make a Motion at this  
27 point? Commissioner Michael

28  
29 Commissioner Michael: I have a question and that is I think some ideas have been suggested that might  
30 perhaps sort of improve the language. Would you prefer to just reflect on those comments and then  
31 come back with something that would be revised and then we would vote on that or do you want us to  
32 try to craft a Motion that reflects some specific input?

33  
34 Ms. Silver: Yeah, I think we can I've been taking notes and I think that your guidance has been really  
35 helpful. I don't know that we necessarily need to come back with a revised ordinance. None of the  
36 comments that you've made so far concern me. I think they're all good comments and we can just  
37 incorporate them into the ordinance that we pass on to Council if that's acceptable to the Commission.

38  
39 MOTION

40  
41 Commissioner Michael: So I would make a Motion to recommend that the City Council adopt the  
42 ordinance deleting the old section and adding the new section subject to the staff making whatever  
43 revisions it deems appropriate to the language that we've seen tonight.

44  
45 Chair Tanaka: Do we have a second?

46  
47 SECOND

48  
49 Commissioner Gardias: Second.

50  
51 Chair Tanaka: Ok, Commissioner Gardias. Does the maker of the Motion wish to speak to the Motion?  
52 Does the seconder? Ok. Anyone want to have any discussion topics on this amendment, revisions,  
53 substitute motions? Ok. If not I see no lights so we're going to take a vote then. So all in favor raise  
54 your hand. Ok, all not in favor? Unanimous. Ok guys we're done with this item. We'll close this item  
55 and move on to the next part.

1 MOTION PASSED (6-0-1, Commissioner Rosenblum absent)

2

3 **Commission Action:** Commissioner Michael moved that to approve the wireless ordinance,

4 Commissioner Gardias seconded. Commissioner Rosenblum left before we voted, and the vote was 6-0-1

5 in favor.