



# City of Palo Alto

## City Council Staff Report

(ID # 10324)

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**Report Type: Consent Calendar**

**Meeting Date: 5/13/2019**

**Summary Title: Second Reading: Ordinance Amending Chapter 18.42.110 (WCF)**

**Title: SECOND READING: Adoption of an Ordinance Amending Section 18.42.110 (Wireless Communication Facilities) of Chapter 18.42 (Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to Update the Code to Reflect Recently Adopted Federal Communications Commission (FCC) Regulations. This Ordinance is Exempt From Environmental Review Under the California Environmental Quality Act (CEQA) Guidelines Sections 15061(b)(3) and 15305 (FIRST READING: April 15, 2019 PASSED: 6-0 Tanaka Absent)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

This Ordinance was first heard by the Council on April 15, 2019, where it passed 6-0 (Tanaka absent). As compared to the ordinance published with the April 15, 2019 staff report, the attached ordinance (Attachment A) incorporates a minor revision to Palo Alto Municipal Code Section 18.42.110(d)(7), as recommended by staff in the staff presentation. The final motion, as reflected in draft action minutes, is listed below:

**PUBLIC HEARING:** Adoption of an Ordinance Amending Section 18.42.110 (Wireless Communication Facilities) of Chapter 18.42 (Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to Update the Code to Reflect Recently Adopted Federal Communications Commission (FCC) Regulations. The Planning and Transportation Commission Recommended Approval of the Ordinance With Minor Modifications on March 27, 2019 (6-0 Roohparvar absent); and Adoption of a Resolution 9825 Entitled "Adopting Objective Aesthetic and Related Standards for Streetlight and Wood Utility Poles in the Public Rights of Way." Environmental Assessment: This Ordinance and Resolution are Exempt From Environmental Review Under the California Environmental Quality Act (CEQA) Guidelines Sections 15061(b)(3) and 15305.

**MOTION AS AMENDED RESTATED:** Council Member DuBois moved, seconded by Council Member Kniss to:

- A.** Adopt Staff recommendation to approve the Resolution and Ordinance;
- B.** Direct Staff to come back as soon as possible, but no more than one year, with an updated Ordinance/Resolution that considers:
  - i.** Explicit hierarchies of preferred location and preferred type of installation. Applicants must use most preferred solution unless demonstrated to be infeasible. Preferred hierarchies should include:
    - a.** by zoning type;
    - b.** local context including characteristics such as visibility, street size and type, and existing foliage;
    - c.** by installation type; d. a clear definition infeasibility as suggested in Staff Report;
  - ii.** Create list of city-owned buildings that would be appropriate sites;
  - iii.** Propose recommended distances from homes and schools and between installations to preserve aesthetics;
  - iv.** Return to Council within one year with best practices regarding inspections of antennas;
- C.** Review the effectiveness of the Ordinance in one year with Council; and
- D.** Direct Staff to do federal legislative advocacy related to wireless facilities regulations.

**MOTION AS AMENDED PASSED:** 6-0 (Tanaka absent)

**Attachments:**

**Attachment A: Ordinance Amending PAMC Section 18.42.110 (SECOND READING)  
(DOCX)**

Not Yet Approved

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Section 18.42.110 (Wireless Communication Facilities) of Chapter 18.42 (Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal Code to Update the Code Consistent with the FCC's Declaratory Ruling and Third Report and Order (FCC 18-133)

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

- A. The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. Wireless service providers are increasingly seeking to utilize public rights of way to deploy small wireless facilities to improve and expand coverage.
- B. The unregulated installation of wireless facilities, including small cell antennas, in public rights-of-way and in other locations, poses a threat to the public health, safety and welfare, including: traffic and pedestrian safety hazards due to unsafe siting; negative and irreversible impacts to trees, landscaping, and infrastructure; noise concerns; and visual and aesthetic blight due to excessive height and lack of camouflaging, negatively impacting the unique character of the City.
- C. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents a threat to the health, welfare and safety of the community.
- D. Local jurisdictions must reasonably allow wireless telecommunication facilities to be located in public rights-of-way, but may impose regulations based on published aesthetic standards.
- E. The regulations of wireless installations are necessary to protect and preserve the aesthetic character of the community and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.
- F. The City Council has adopted a Wireless Communication Facilities (WCFs) code to regulate the various health, welfare, and safety impacts presented by the proliferation of WCFs and to balance these impacts with the interests of consumers in receiving the benefits of wireless technologies.
- G. Federal and state law place significant limits on the City's exercise of local control over WCF matters. On September 26, 2018, the Federal Communications Commission

adopted a Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84; FCC 18-133), further limiting local control.

- H. The purpose of the amendments herein is to establish uniform and comprehensive standards and regulations regarding the siting, development, and operation of wireless telecommunication facilities within the City in a manner consistent with State and Federal law.

SECTION 2. Section 18.42.110 of Chapter 18.42 is hereby amended 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. Although this Section implements and references provisions of preemptive state and federal law, nothing in this Section shall be interpreted to create an independent source of the rights provided an applicant by such state or federal law.

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~~ Section 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

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 that part of a wireless communications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of personal wireless services, as defined in 42 U.S.C. § 332(c)(7)(C)(i). This definition does not include antennas designed for amateur or household use. ~~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 the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: 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)~~a. 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)~~b. 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)~~c. 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 same as defined in valid regulations promulgated by the FCC, including 47 C.F.R. §§ 1.6002(g) or 1.6100(b), as those sections may be amended from time to time. For the purpose of convenience only, the definition provided in 47 C.F.R. § 1.6100(b), for eligible facilities requests, is stated as follows: 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 the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: 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 the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: any existing tower or base station that exists at the time the application is filed with the city.

(7) **"Existing"** means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: ~~for a constructed tower or base station, means that the tower or base station is existing for purposes of an eligible facilities request~~ if 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) **"Small Wireless Facility,"** means the same as defined in any valid regulations adopted by the FCC. For purposes of convenience only, the definition provided at 47 C.F.R. Section 1.1312(e)(2) is stated here as follows: a facility that meets each of the following conditions:

a. The structure on which antenna facilities are mounted:

(I) Is 50 feet or less in height, or

(II) Is no more than 10 percent taller than other adjacent structures, or

(III) Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and

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b. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and

c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and

d. The facility does not require antenna structure registration under 47 C.F.R. Section 17; and

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

f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by the FCC.

(~~12~~13) "Substantially Changes" means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: 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~~)a. 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~~)b. 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

(~~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.

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~~(iii)~~c. 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)~~d. 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)~~e. 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)~~14) **"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)~~15) **"Transmission Equipment"** means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: equipment that facilitates transmission of any FCC-licensed or authorized wireless communication service.

(16) **"Wireless Communications Facility" or "WCF"** means any antenna, associated equipment, base station, ~~small cell system,~~ Small Wireless Facility, tower, and/or transmission equipment located in Palo Alto, but does not include :

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a. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, or its successor regulation;

b. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or any successor regulation;

c. Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio;

d. Mobile services providing public information coverage of news events of a temporary nature.

e. Telecommunications facilities owned and operated by any government agency or emergency medical care provider.

~~———— (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)~~a. 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

b. Any collocation of a Small Wireless Facility; or

~~(ii)~~c. Any other collocation not eligible for a Tier 1 WCF Permit.

(3) A Tier 3 WCF Permit shall be required for the siting of any WCF, including a Small Wireless Facility, that is not a collocation subject to a Tier 1 or 2 WCF Permit. An application shall not require a Tier 3 WCF Permit solely because it proposes the replacement in-place of an existing streetlight or wood utility pole.

(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~~ when filing an application;

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(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. Applicants are encouraged to host the meeting before submitting an application. The Before an application may be approved, the applicant shall provide a proof of notice affidavit to the city that contains:

~~(i)a.~~ a. Proof that the applicant noticed and hosted the community meeting no later than 15 days after filing the application ~~before filing the application~~;

~~(ii)b.~~ b. 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 feasible and 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. The City shall review and act upon application materials in a manner consistent with any timeframes provided in controlling state or federal law, including valid regulations and orders promulgated by the FCC.

~~(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~~

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~~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.~~

~~\_\_\_\_\_ (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.~~

~~\_\_\_\_\_ (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;

(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:

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~~(i)a.~~ The proposed collocation or modification shall not defeat any existing concealment elements of the support structure; and

~~(ii)b.~~ 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, who may, in his or her sole discretion, refer an application to the Architectural Review Board. The Director's decision shall be appealable directly to the City Council. An appeal may be set for hearing before the City Council or may be placed on the Council's consent calendar, pursuant to the process for appeal of architectural review set forth in Section 18.77.070(f).

(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 objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i). If such objective standards are repealed, an application shall not be granted unless, in addition to the other requirements of this section, ~~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, who may, in his or her sole discretion, refer an application to the Architectural Review Board and/or Planning and Transportation Commission. The Director's decision shall be appealable directly to the City Council. An appeal may be set for hearing before the City Council or may be placed on the Council's consent calendar, pursuant to the process for appeal of architectural review set forth in Section 18.77.070(f).

(2) The Director or Council on appeal shall grant a Tier 3 WCF Permit provided the conditional use permit findings in Section 18.76.010(c) can be made and 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 objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i). ~~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.~~ If the City Council repeals all objective standards, an application shall not be granted unless, in addition to the other requirements of this section, 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 3 WCF Permit if the above findings cannot be made.

(i) Generally Applicable Development Standards

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Unless the City Council has adopted more specific standards, and E except as otherwise provided in this section, a proposed WCF Project shall comply with the following standards:

(1) Shall utilize the smallest footprint possible antennae, radio, and associated equipment, as measured by volume, technically feasible to achieve a network objective;

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

~~(3)~~ (2) Shall be screened from public view;

(4) When attached to an existing structure, shall be shrouded or screened using materials or colors found on existing structure ~~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;

~~(6)~~ (5) 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, such as the use of a monopine design;

~~(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)~~ (6) ~~For any Tier 2 or Tier 3 WCF proposed to~~ Shall not be attached on a 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 no more than fifteen (15) feet beyond the permitted height of the building in the zone district;

~~(10)~~ (8) Except as otherwise permitted by the Spectrum Act, a tower or other stand-alone Tier 3 WCF Project shall not exceed beyond sixty-five (65) feet in height; and

~~(11)~~ (9) 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:

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(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.

(7) Subject to City Uses. Any permit to install or utilize poles or conduit in the public rights of way is subject to the City's prior right to use, maintain, expand, replace or remove from use such facilities in the reasonable exercise of its governmental or proprietary powers. Such permit is further subject to the City's right to construction, maintain, and modify streets, sidewalks, and other improvements in the public rights of way. The City, in its sole discretion, may require removal or relocation of a permittee's equipment, at permittee's sole cost and expense, if necessary to accommodate a City use.

(8) Replacement. Where feasible, as new technology becomes available, the applicant shall place above-ground equipment below ground and replace equipment remaining above-ground with smaller equipment, as determined by volume. The applicant shall obtain all necessary permits and approvals for such replacement.

(9) Permit length. WCFs permits shall be valid for the time provided in Section 18.42.110(n), except that a permit shall automatically expire after twelve months from the date of approval if within such twelve month period, the applicant has not obtained all necessary permits to commence construction. The director may, without a hearing, extend such time for a maximum period of twelve additional months only, upon application filed with him or her before the expiration of the twelve-month limit.

(k) Exceptions

(1) The decision-making authority may grant exceptions to objective standards adopted by City Council resolution or any provision of this Section 18.42.110, upon finding that:

- a. The proposed WCF complies with the requirements of this Section 18.42.110 and any other requirements adopted by the City Council to the greatest extent feasible; and either
- b. As applied to a proposed WCF, the provision(s) from which exception is sought would deprive the applicant of rights guaranteed by federal law, state law, or both; or
- c. Denial of the application as proposed would violate federal law, state law, or both.

(2) An applicant must request an exception at the time an application is initially submitted for a WCF permit under this Section 18.42.110. The request must include both the specific provision(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the City has deemed an application complete constitutes a material change to the proposed WCF and shall be considered a new application.

(3) If the applicant seeks an exception from objective standards adopted by City Council resolution or generally applicable development standards, the Director may refer the application to the Architectural Review Board for recommendation on whether the application complies with such standards to the greatest extent feasible.

(4) The applicant shall have the burden of proving that federal law, state law, or both compel the decision-making authority to grant the requested exception(s), using the evidentiary standards applicable to the law at issue. The City shall have the right to hire independent consultants, at the applicant's expense, to evaluate the issues raised by the exception request and to submit rebuttal evidence where applicable.

(~~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

WCF 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.

(m) 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 applicable to issuance of the Permit, as provided in subdivisions (f), (g), and (h) of this section.

(n) Expiration

Except as otherwise provided in the permit or in a lease or license agreement with the City of Palo Alto, WCF permits shall be valid for a period of ten years from the date of approval. An applicant may seek extensions of an approved WCF permit in increments of no more than ten years and no sooner than twelve months prior to the expiration of the permit. The Director shall approve an extension request upon finding that that applicant has complied with all conditions of approval for the WCF permit and will comply with all other requirements applicable to WCFs at the time the extension is granted. Prior to issuing a decision on an extension request, the Director may seek additional studies and information to be prepared at the applicants expense.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it does not authorize the construction of Wireless Communication Facilities in any locations where such facilities are not already permitted; therefore it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. The ordinance is further exempt under CEQA Guidelines sections 15301, 15302, 15303 and 15305 because it simply provides a comprehensive permitting scheme governing minor alterations to existing facilities or small structures.

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

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Director of Planning & Community  
Environment