

ORDINANCE NO. 3552 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**AMENDING CITY CODE SECTION 38-112.4, PERSONAL WIRELESS SERVICE FACILITIES,
TO REFLECT CHANGES IN CELLULAR TECHNOLOGY AND STATE AND FEDERAL
REGULATION**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, City Code Section 38-112.4 relates to Personal Wireless Service (PWS) facilities and was adopted in 2010, and since that time, advances in cellular technology, including "Small Cell" facilities and significant changes in Federal Communication Commission (FCC) regulations and State law have resulted, requiring updates to the current code section;

WHEREAS, amendments to the code section are necessary to successfully communicate to prospective applicants, the public, City officials and City staff the purpose of the code section, the submittal requirements, the review and decision process, design standards and the required findings to either approve or deny a specific PWS application;

WHEREAS, the proposed code section amendments achieve this necessary clarification and also include a definitions component specific to PWS facilities and technology and consistent with mandatory definitions the City must apply pursuant to FCC regulations; and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305) because the project involves minor changes to land use regulations that will not result in physical changes to the environment.

Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The zoning ordinance amendment does not apply to a particular location or specific site. Therefore, no potential issues related to an environmental resource of hazardous or critical concern will directly result.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The zoning ordinance amendment does not apply to a particular location or specific

site. Therefore, no potential issues related to cumulative impacts will directly result.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The zoning ordinance amendment does not apply to a particular location or specific site. Therefore, no potential issues related to unusual environmental circumstances will directly result.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The zoning ordinance amendment does not apply to a particular location or specific site. Therefore, no potential issues related to state scenic highways will directly result.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The zoning ordinance amendment does not apply to a particular location or specific site. Therefore, no potential issues related to hazardous waste sites pursuant to Government Code Section 65962.5 will directly result.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The zoning ordinance amendment does not apply to a particular location or specific site. Therefore, no potential issues related to historical resources will directly result.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 38, Section 112.4 is hereby amended to read as follows:

A. "Purpose.

1. This section is enacted to provide reasonable standards for the placement, design, construction and modification of wireless facilities within the City of Monterey. These regulations are designed to protect and promote public safety, community welfare, and the unique visual quality of the City, while at the same time recognizing the benefit of robust wireless services to the community. This section is intended to use the City's power to regulate the use of land under federal and state law, but not to exceed the scope of the City's authority.
2. This section does not intend to, and shall not be interpreted or applied to:
 - a. prohibit or effectively prohibit personal wireless services; or
 - b. unreasonably discriminate among providers of functionally equivalent personal wireless services; or
 - c. regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or
 - d. prohibit or effectively prohibit any collocation or modification that the City may not deny under California or federal law;
 - e. preempt any applicable California or federal law.

B. Applicability; Exemptions.

1. Applicable Facilities. The provisions in this section 38-112.4 shall be applied to all applications for new wireless facilities and all applications for changes to existing wireless facilities pending a final decision on or before the effective date of this section, unless the application qualifies for an exemption
 2. Exempt Facilities. The provisions in this section 38-112.4 shall not be applied to applications for the following wireless facilities:
 - a. Amateur radio antennas (including ham and shortwave).
 - b. Over-the-air reception devices ("OTARDs") as defined in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded, which include without limitation direct-to-home satellite antennas smaller than two feet in diameter.
 - c. Wireless facilities owned and operated by the City for its use.
 - d. Facilities owned and operated by California Public Utilities Commission-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.
- C. Prohibited Facilities. Any wireless facilities that do not comply with the most current regulatory and operations standards, including but not limited to radio frequency (RF) emission standards adopted by the FCC, are prohibited. Applicant is required to affirm, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC. Documentation must be submitted proving that the permit applicant has whatever certificate or license the FCC requires to operate the facility.
- D. Planning Applications and Approvals Required.
1. Use Permit Review. All new wireless facilities and all substantial changes to existing wireless facilities shall first require an application for a use permit pursuant to City Code Section 38-156 *et seq.* and approval by the Zoning Administrator.
 2. Section 6409(a) Approval. Any application for a collocation or modification to an existing wireless tower or base station submitted for approval pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified as 47 U.S.C. § 1455(a)) shall require a written application subject to administrative review and approval or denial by the Zoning Administrator pursuant to section 38-112.4(D)(2)(a).
 - a. Administrative Review Procedures.
 - i. Section 6409(a) Approval Findings. The use permit for existing facilities will be reopened for review by the Zoning Administrator. The Zoning Administrator may grant a section 6409(a) approval only when he or she finds all the following:
 - I. The public notice required by law has occurred.
 - II. The project involves the collocation, replacement or removal of transmission equipment on an existing wireless tower or base station.
 - III. All prior regulatory approvals required for the initial construction and any later modifications to the tower or base station, if any, were properly obtained.
 - IV. The project would not substantially change the physical dimensions of the existing wireless tower or base station.
 - ii. Denied Applications for Section 6409(a) Approvals. Any denial of an application for section 6409(a) approval shall be in writing, contain the reasons for the denial, and be without prejudice to the applicant or the project. The applicant may immediately submit an application for a use permit or a section 6409(a) approval for substantially the same project; provided, however, that the

applicant has paid all fees and costs payable to the City in connection with the previously denied application.

- iii. Referral to the Planning Commission. Any interested party or City staff member may request that a specific application for Section 6409(a) approval be referred to the Planning Commission for review and a decision at a noticed public meeting. The Planning Commission's review shall be limited to only whether the proposed collocation or modification qualifies for approval pursuant to 47 U.S.C. § 1455(a). Upon referral, the applicant shall be required to pay the applicable fee for Planning Commission review.

E. Applications and Submittals.

1. Application Content. The Planning Department shall develop, and maintain detailed application submittal requirements, which shall be made available to the public, and shall be subject to review and oversight by the Planning Commission on an annual basis. All fees for application review shall be nonrefundable unless specifically provided otherwise in a resolution by the City Council.
2. Pre-submittal Conference. Before application submittal, applicants are strongly encouraged schedule and attend a pre-submittal conference with City staff for all wireless facilities applications. The pre-submittal conference is intended to foster cooperative discussion between applicants and staff, identify potentially avoidable issues and generally streamline the application review process to occur after the applicant formally submits its application. City staff will endeavor to provide applicants with an appointment between approximately five and 15 working days after a written request for an appointment is received. The Zoning Administrator, in its sole discretion, may waive in writing the required appointments in section 38-112.4(E)(3) for an applicant that participates in a pre-submittal conference meeting.
3. Application Submittal Appointment. All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. City staff will endeavor to provide applicants with an appointment within approximately five working days after a request.
4. Incomplete Applications Deemed-Withdrawn. In the event that an applicant fails to respond to an incomplete notice within 90 calendar days from the notice date, the City shall deem the application withdrawn and the fee is nonrefundable. Upon an applicant's written request, the Zoning Administrator, in its sole discretion, may extend the 90-day time limit up to an additional 60 calendar days.

F. Design and Development Standards.

1. Preferred Designs. All applicants should, to the extent feasible, collocate new facilities and substantial changes to existing facilities with existing wireless facilities. Collocations should, to the extent feasible, be proposed on structures in accordance with the following preferences. The City prefers the following designs, ordered from most preferred to least preferred:
 - a. Building-mounted facilities with rooftop-mounted antennas; then
 - b. Building-mounted facilities with facade-mounted antennas; then
 - c. Public rights-of-way facilities and non-communications utility facilities; then
 - d. Freestanding tower facilities.
2. Preferred Locations. All applicants should propose new facilities and substantial changes to existing facilities in locations according to the following preferences, ordered from most preferred to least preferred:
 - a. City-owned or controlled parcels outside of Open Space Districts, Residential Districts or the H-1, H-2, D-1 overlay zones; then

- b. Parcels in Industrial Districts; then
 - c. Parcels in Commercial Districts.
3. Discouraged Locations. All applicants should avoid proposing new facilities and substantial changes to existing facilities in the following locations:
- a. Open Space Districts;
 - b. Residential Districts; and
 - c. H-1, H-2, D-1, and overlay zones.
4. General Design and Aesthetic Standards. All new facilities and substantial changes to existing facilities must conform to the standards in this section.
- a. Concealment. Wireless facilities must incorporate concealment measures sufficient to render the facility either camouflaged or stealth, as appropriate for the proposed location and design. All facilities must be designed to visually blend into the surrounding area in a manner compatible with the local community character.
 - b. Height. Wireless facilities must not exceed the applicable height limit for structures in the applicable zoning district.
 - c. Setbacks. Wireless facilities may not encroach into any applicable setback for structures in the applicable zoning district.
 - d. Collocation. Applicants must design their facilities to accommodate future collocated facilities to the extent feasible.
 - e. Noise. A wireless facility and all equipment associated with a wireless facility must not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located. The approval authority body may require the applicant to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the approval authority deems necessary or appropriate to ensure compliance with the applicable ambient noise limit
 - f. Lights. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.
 - g. Signs. No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 - h. Fencing or Enclosures. Any fencing or enclosures proposed in connection with a wireless facility must blend with the natural and/or man-made surroundings. Additional landscape features may be required to screen fences. Barbed wire, razor ribbon, electrified fences and similar measures for securing a wireless facility may not be appropriate, except when the applicant demonstrates that the need for such measures significantly outweighs the potential danger to the public.
 - i. Landscaping. Landscaping may be required to visually screen facilities from adjacent properties or public view or to provide a backdrop to camouflage the

facilities. All proposed landscaping is subject to Architectural Review approval by the Zoning Administrator, unless the Zoning Administrator refers the landscaping plan to the Architectural Review Committee. Landscaping may be required for the purposes that include, but are not limited to, the following:

- i. To preserve existing on-site and associated access way vegetation and trees to the extent feasible at all times before, during and after construction.
- ii. To minimize disturbance of the existing topography.
- iii. Plant additional trees and other vegetation around the facility, in the vicinity of the site, and along access roads where such vegetation is appropriate to provide screening of wireless facilities and related access roads.

5. Building-mounted Facilities.

- a. General Design Preferences. All applicants should, to the extent feasible, propose new non-tower facilities according to the following preferences, ordered from most preferred to least preferred:
 - i. completely concealed and architecturally integrated facade or rooftop mounted base stations with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - ii. completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks).
- b. Rooftop-mounted Equipment. The City may approve unscreened rooftop transmission equipment only when it expressly includes a condition of approval that such equipment is effectively concealed due to its low height and setback from the roofline.
- c. Facade-mounted Equipment. Applicants must conceal all facade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The City may not approve any "pop-out" screen boxes unless such design is architecturally consistent with the original support structure. The City may not approve any exposed facade-mounted antennas, which includes exposed antennas painted to match the facade.
- d. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).

6. Public Rights-of-Way Facilities.

- a. Impact on Public Use. The City shall not approve any facilities, or any equipment or improvements in connection with a facility, in the rights-of-way that unreasonably subject the public use to inconvenience, discomfort, trouble, annoyance, hinderance, impediment or obstruction. As used in this subsection F.6.a, the term "Public use" includes physical travel and occupancy as well as social, expressive, and aesthetic functions.
- b. Concealment. All facilities in the rights-of-way must be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.
- c. Undergrounded Equipment. To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground when proposed in an area

where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground its non-antenna equipment to the extent feasible, subject to the City's standard archaeological sensitivity practices. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection F.6.c is intended to require the applicant to install any electric meter required by the applicant's electrical service provider underground.

- d. **Ground-mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The City may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the City approves ground-mounted equipment, the applicant must conform to the following requirements:
 - i. **Self-Contained Cabinet or Shroud.** The equipment shroud or cabinet must contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment must be concealed from view.
 - ii. **Concealment.** The City may require the applicant to incorporate concealment elements into the proposed design, including but not limited to, public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
- e. **Pole-mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
 - i. **Antennas.** The City prefers compact radomes at top of the pole, preferably flush with the pole, rather than equipment that create arms or hanging appendages. The antenna must be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. A side-mounted antenna may be approved if the City determines that the side-mounted antenna would be more appropriate given the built environment, neighborhood character, and overall site appearance. GPS antennas must be placed within the radome or directly above the radome not to exceed six inches. Pole-mounted antennas shall not increase the pole height by more than two feet and generally shall not exceed the diameter of the pole.
 - ii. **Pole-Mounted Equipment Cabinets.** When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment cage not extend more than 10 inches beyond the pole centerline on either side. The equipment cage must be non-reflective and painted, wrapped or otherwise colored to match the existing pole. All pole-mounted equipment must be installed as flush to the pole as possible. Any standoff mount for the

equipment cage may not exceed 4 inches and must include metal flaps (or "wings") to conceal the space between the cage and the pole.

- iii. **New and Replacement Poles.** If an applicant proposes a new facility in the public rights-of-way, then the applicant must use existing above-ground structures. Replacement of utility poles to support pole mounted equipment shall be placed as close to the edge of the lot as possible and the centerline of the new pole must be aligned with the centerlines of existing poles within the right-of-way. New poles within the right-of-way, such as monopoles, new street lights and/or faux flag poles, are discouraged, especially where the appearance would be out of character with the surrounding area and will be permitted only when the applicant demonstrates that no existing or replacement above-ground structures are available. If permitted, new poles shall utilize materials and colors similar to and compatible with existing streetlight or utility poles in the area so as to not be visually obtrusive. In addition, the approval authority may require the applicant to install a decorative or integrated pole designed to conceal the equipment.
 - iv. **Decorative light poles.** Pole mounted facilities are prohibited on decorative light pole fixtures.
 - f. **Non-reflective Finishes.** All above-ground or pole-mounted equipment in the rights-of-way must not be finished with reflective materials as approved by the approval authority.
7. **Freestanding Tower Facilities.**
- a. **General Design Preferences.** All applicants should, to the extent feasible and appropriate for the proposed location, design new towers according to the following preferences, ordered from most preferred to least preferred:
 - i. Faux architectural features including, but not limited to, sculptures, clock towers, and flagpoles; then
 - ii. Faux trees
 - b. **Tower-mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
 - c. **Ground-mounted Equipment.** Applicants must conceal ground-mounted equipment with opaque fences or other opaque enclosures. The City may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
 - d. **Concealment Standards for Faux Trees.** All permits for faux tree facilities approved under this section 38-112.4 are subject to the following required conditions of approval:
 - i. the canopy must completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches;
 - ii. the canopy must be naturally tapered to mimic the particular tree species;
 - iii. all tower-mounted equipment, including all antennas, equipment cabinets, cables, mounts and brackets, must be painted flat natural colors to mimic the particular tree species;
 - iv. all antennas and other tower-mounted equipment cabinets must be covered with broadleaf or pine needle "socks" to blend in with the faux foliage; and

- v. the entire vertical structure must be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.

G. Abandoned or Decommissioned Facilities; Transfer of Ownership.

1. Procedures for Abandoned or Discontinued Facilities.

- a. To promote the public health, safety and welfare, the Zoning Administrator may declare a facility abandoned or discontinued when:
 - i. The permittee notifies the Zoning Administrator that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or
 - ii. The permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Zoning Administrator that states the basis for the Zoning Administrator's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or
 - iii. After 10 years, when the permit expires, in the case where the permittee has failed to file a timely application for renewal.
- b. After the Zoning Administrator declares a facility abandoned or discontinued, the permittee shall have 90 days from the date of the declaration (or longer time as the Zoning Administrator may approve in writing as reasonably necessary) to:
 - i. reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
 - ii. transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
 - iii. remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.
- c. If the permittee fails to act as required in section 38-112.4(G)(1)(b) within the prescribed time period, the City Council may deem the facility abandoned at a noticed public meeting. The Zoning Administrator shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the last-known permittee or real property owner that provides 30 days (or longer time as the Zoning Administrator may approve in writing as reasonably necessary) from the notice date to:
 - i. reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
 - ii. transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
 - iii. remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
- d. If the permittee fails to act as required in section 38-112.4(G)(1)(c) within the prescribed time period, the City may remove the abandoned facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly

reimburse the City upon receipt of a written demand, include any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The City Clerk shall cause the lien to be recorded with the County of Monterey Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Monterey Recorder's Office.

2. Transfer of Ownership. Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the City. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept of all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in Zoning Code Section 38-221.

H. Notices; Findings; Decisions.

1. Notice.
 - a. Notice Required for a Use Permit. The Zoning Administrator (or, if referred, the Planning Commission) or its designee shall conduct a noticed public hearing in accordance with City Code section 38-159.
 - b. Deemed-Approval Notice. No more than 30 days before the applicable timeframe for review expires, the applicant must provide written notice to all persons entitled to notice under this section 38-112.4.H.1 and the City Manager's office. The notice must contain the following statement: "Pursuant to California Government Code section 65964.1, state law may deem the application approved in 30 days unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement."
2. Use Permit Findings. In addition to the findings required by Code section 38-161, the Zoning Administrator (or, if referred, the Planning Commission) shall approve an application for a use permit if supported by substantial evidence, and on the basis of the application, plans, materials and testimony submitted, the Zoning Administrator finds:
 - a. The facility is not detrimental to the public health, safety and welfare.
 - b. The facility complies with all applicable design and development standards in the City Code.
 - c. The facility is designed, constructed and operated in such a manner to minimize the amount of noise impacts to adjacent uses and activities and shall be in conformance with the General Plan and Zoning Ordinance noise exposure standards.
 - d. The facility is designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight or attractive nuisances.
 - e. The facility does not unreasonably impair or diminish views of and vistas from adjacent properties and designated scenic corridors.

- f. The facility is necessary or desirable for, and compatible with, the neighborhood or community. The City may consider a number of factors, which may include but shall not be limited to, the proportionality and scale of the facility relative to the surrounding natural and/or manmade environment, the proximity of the facility to residential structures, the compatibility of the facility with uses on adjacent and nearby properties, the surrounding topography, the surrounding tree coverage and foliage, and the compatibility with the values and objectives expressed in the General Plan and any applicable Specific Plan.
- 3. Limited Exception to Required Findings.
 - a. Effective Prohibition. In the event that an applicant alleges that strict compliance with any provision in the Code would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant an exemption from any requirement in this section when an applicant for a personal wireless services facility demonstrates with clear and convincing evidence that: (1) a gap in the applicant's service coverage exists; and (2) all alternative designs and locations identified in the application review process are either technically infeasible or not potentially available as demonstrated through a meaningful comparative analysis. The applicant always bears the burden to demonstrate why an exemption should be granted. The City may rebut the applicant's showing of a lack of available and feasible alternative sites.
 - b. Scope of Exemption. The exemption pursuant to section 38-112.4(H)(3)(a) shall be (1) granted on a case-by-case basis; and (2) narrowly tailored to minimize any deviation from the requirements in the Code to the maximum extent feasible.
- 4. Written Decision. The reviewing authority shall send the applicant written notice that contains both the decision and the reasons for the decision.
- 5. Appeals. Subject to the applicable timeframe for application review, and accounting for any tolling periods, any interested party may appeal an action of the approval authority in accordance with Chapter 38, Article 27.
- I. Independent Consultant Review.
 - 1. Authorization. The City Council authorizes the City Manager or designee to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the City Manager or designee in connection with any permit application.
 - 2. Scope. The City Manager or designee may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:
 - a. permit application completeness or accuracy;
 - b. planned compliance with applicable RF exposure standards;
 - c. whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
 - d. whether technically feasible and potentially available alternative locations and designs exist;
 - e. the applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
 - f. any other issue that requires expert or specialized knowledge identified by the City Manager or designee.
 - 3. Deposit. The applicant must pay for the cost of such review and for the technical consultant's testimony in any hearing as requested by the City Manager or designee and must provide a reasonable advance deposit of the estimated cost of such review

with the City prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the City Manager or designee. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the City Manager or designee shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required in the Code.

J. Standard Conditions of Approval.

1. Standard Conditions for Use Permits.

- a. Permit Term. Any validly issued conditional use permit or land use permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly ten (10) years and one (1) day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.
- b. Code Compliance. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.
- c. Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- d. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department upon permittee's receipt of the Planning Department's written request, except in an emergency determined by the City when all such contact information for responsibility parties shall be immediately provided to the Planning Department upon that person's verbal request.
- e. Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right

to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- f. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
 - g. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
 - h. Graffiti Removal. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.
 - i. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
 - j. Build-Out Period. As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.
 - k. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.
2. Standard Conditions for Section 6409(a) Approvals.
- a. No Permit Term Extension. The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
 - b. Accelerated Permit Term Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, the permit or permits issued in connection with such Section 6409(a) approval shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated section 6409(a) approval when it has submitted an application for either a conditional use permit or land use permit for those improvements before the one-year period ends. The Planning Department may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.

- c. No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.
- d. Code Compliance. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.
- e. Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- f. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department upon permittee's receipt of the Planning Department's written request, except in an emergency determined by the City when all such contact information for responsibility parties shall be immediately provided to the Planning Department upon that person's verbal request.
- g. Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- h. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- i. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

- j. Graffiti Removal. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.
- k. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- l. Build-Out Period. As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.
- m. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.

K. Definitions.

Definitions in this section 38-112.4 may contain quotations and/or citations to Title 47 of the Code of Federal Regulations section 1.40001 *et seq.* In the event that any referenced section is amended, creating a conflict between the quoted definition and the amended language of the referenced section, the definition in the referenced section, as amended, shall control. The following definitions only apply to section 38-112.4 Wireless Facilities and shall not be construed to define the same terms found in any other section of this Code.

"base station" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term 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 in [47 C.F.R. § 1.40001(b)(9)] or any equipment associated with a tower.

(i) The term includes, but is not limited to, 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) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

Note: As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

"camouflaged" means a wireless facility to which the applicant applies some concealment techniques in order to blend the equipment into the surrounding area or to appear to be an object that is congruent with its environment, but the equipment or the concealment technique is readily apparent to the observer.

Examples include, but are not limited to, (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; or (3) faux-trees either as the only tree in the vicinity or inconsistent with other tree species in the vicinity.

"collocation" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as "[t]he 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." As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.

"CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or it's duly appointed successor agency.

"eligible facilities request" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment."

"eligible support structure" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as "[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section."

"existing" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes of [the FCC's Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another 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."

"distributed antenna system" or "DAS" means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

“FAA” means the Federal Aviation Administration or its duly appointed successor agency.

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

“OTARD” means antennas covered by the FCC’s “Over-the-Air Reception Devices” rule in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended.

“personal wireless services” means the same as provided in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

“personal wireless service facilities” means the same as provided in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended, which defines the term as “facilities for the provision of personal wireless services.”

“public rights-of-way” means land which by deed, conveyance, agreement, easement, dedication, usage or process of law, is reserved and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the City. Public right-of-way includes but is not limited to street, roadway, planter strip and sidewalk.

“radome” means a weatherproofed enclosure (typically constructed from fiberglass or plastic material) that protects and conceals an antenna or antennas contained therein.

“RF” means “radio frequency” or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Section 6409(a)” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

“site” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that “[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

“stealth” means concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.

Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying building in architectural style, physical proportion and construction-materials quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

“substantial change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as

may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC's criteria and thresholds for a substantial change according to the facility type and location.

- (A) For towers outside the public rights-of-way, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - (2) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - (3) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (4) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (B) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - (2) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - (3) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - (4) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - (5) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (C) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (1) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
 - (2) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

“tower” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as “[a]ny structure built for the sole or primary purpose of

supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site." Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

"transmission equipment" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as "[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul."

"wireless" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

"wireless facility" or "wireless facilities" means an installation used to transmit and/or receive signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities."

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 18th day of October, 2016, by the following vote:

AYES:	5	COUNCILMEMBERS:	Barrett, Downey, Haffa, Smith, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City

