

ORDINANCE NO. 3660 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**REPEALING AND REPLACING MONTEREY CITY CODE CHAPTER 38, ARTICLE 17,
SECTION 112.4 – WIRELESS COMMUNICATIONS FACILITIES AND FINDING THE SAME
EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

SECTION 1:

WHEREAS, the City of Monterey currently regulates the placement, design, construction and modification of wireless communications facilities in the City of Monterey;

WHEREAS, these regulations are designed to protect and promote the public's health, safety, and welfare;

WHEREAS, the City's aesthetics, unique historic setting, and views benefit residents, attract visitors worldwide, enhance property values, are a catalyst for economic development, and increase the City's tax base;

WHEREAS, the City finds that wireless communications facilities should not be placed in the rights-of-way at such points or in such manner as to incommode the public use of the same, except as such placement is required under federal law; and because of the impacts on the City and its residents, should not be placed at certain points or in such manner on public or private property unless required by federal law;

WHEREAS, the City has amended its Personal Wireless Facilities Ordinance several times. The most recent amendments include Ordinance 3498 (April 15, 2014), Ordinance 3552 (October 18, 2016, and Ordinance 3586 (October 16, 2018). In addition, the City adopted Ordinance 3609 (February 4, 2020) and added Chapter 32, Article 8, to require (subject to approved deviations and certain exclusions) undergrounding of all new utilities used for communications service, regardless of the type of utility proposing the installation, in all new development and for existing utilities that are part of a redevelopment project;

WHEREAS, on August 7, 2018, the City Council appointed a Wireless Subcommittee which met 20 times in 2018, and five times in 2019 until it was dissolved on December 17, 2019;

WHEREAS, the Wireless Subcommittee drafted the ordinance and it was edited by staff;

WHEREAS, the Planning Commission and City Council find that to avoid unsightly visual clutter that would degrade the visual character of the streets and incommode the public enjoyment and use of the rights-of-way, wireless communications facilities placed in the rights-

of-way should be separated from each other and from certain non-commercial properties unless required by federal law;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on August 9, September 13, September 27, 2022 and October 25, 2022, took public testimony, held a discussion, and voted to recommend City Council adoption of the Zoning Ordinance amendment;

WHEREAS, on January 17, 2023, the City Council received a presentation from outside counsel on the legal framework applicable to wireless facilities and received public comment;

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5) because the project consists of a zoning ordinance amendment to modify existing regulations affecting wireless communication facilities, which would not result in any changes in density or traffic patterns. Additionally, the project is exempt from CEQA pursuant to CEQA Guidelines Section 15308 (Class 8) as an action taken by a regulatory agency to assure the enhancement and protection of the environment, which includes the visual environment of the City. 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 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 environment is not particularly sensitive because the project is purely a zoning ordinance amendment. Therefore, impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

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. No cumulative impact would occur because the project is purely a zoning ordinance amendment that would regulate the visual appearance of communications structures in the City right-of-way with uniform, objective standards. Therefore, cumulative impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

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. There are no unusual circumstances with this project because the project is purely a zoning ordinance amendment and the land use limitations imposed by the amendment are commonplace under Class 5 and Class 8 categorical exemptions. Therefore, significant impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed on a project-by-project basis for CEQA applicability.

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 project is purely a zoning ordinance amendment, which would not damage scenic resources, but rather, assure their protection. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

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 project is purely a zoning ordinance amendment regulating the visual effect of communications structures. Therefore, impacts to hazardous waste sites would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

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 project is purely a zoning ordinance amendment that would regulate the visual effect of communications structures in the City right-of-way, and not any historic resources. Therefore, impacts to historic resources would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, THE MONTEREY CITY COUNCIL DECLARES, as follows:

SECTION 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 3: CEQA The passage of the ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the environmental regulations of the City. The City, acting as Lead Agency, has determined the Project qualifies as being Categorically Exempt from CEQA Guidelines pursuant to Article 19, Sections 15305 and 15308, Classes 5 and 8.

SECTION 4: Section 38-112.4 is hereby repealed in its entirety and replaced with the following:

38-112.4 Wireless Communications Facilities

A. Purpose.

This section is enacted to reasonably regulate, to the greatest extent permitted under California and federal law, the placement, design, construction, and modification of wireless communications facilities within the City of Monterey. These regulations are designed to protect and promote public's health, safety, and welfare, including by minimizing adverse aesthetic impacts and protecting persons and property from potential dangers. The City's aesthetics, unique historic setting, and views benefit residents, attract visitors worldwide, enhance property values, are a catalyst for economic development, and increase the City's tax base. The City's economy, as well as the well-being of all who work, visit or live in the City depends in part on maintaining the City's beauty.

B. Applicability.

1. The provisions in this section shall be applied to all applications for new wireless communications facilities and all applications for changes to existing wireless communications facilities filed after the effective date of this section, unless the wireless communications facility is exempt from the permitting requirement. For all other applications, the provisions of Section 38-112.4 as it existed before the effective date shall apply.
2. This section is not intended to exempt wireless communications facilities from any applicable laws.
3. This section shall be interpreted and applied in a manner consistent with state and federal law.
4. The time within which any act provided by this Section is to be done has been computed to permit the City to comply with state and federal regulations governing the time for action on applications for wireless communications facilities, and may be extended by the City Manager where an extension will not result in a violation of those state or federal regulations, or otherwise prejudice the public, or shortened by the City Manager when necessary to prevent a violation of applicable law.

C. General Requirements.

1. Every wireless communications facility, whether or not installed pursuant to a use permit, shall:
 - a. Comply at all times with Federal Communications Commission (“FCC”) standards for radiofrequency (“RF”) emissions currently in effect or as may be amended;
 - b. Comply with all applicable state, federal and local laws and requirements; and,
 - c. Comply with conditions applicable to encroachments if located in the public rights-of-way.
2. No wireless communications facilities may be installed speculatively.
3. All wireless communications facilities located within an airport safety zone as defined by the Monterey Airport Land Use Compatibility Plan (ALUCP), or an airspace protection zone as defined by the FAA shall comply with applicable criteria in the ALUCP, and FAA standards. No work may proceed on a permit except in compliance with such standards, or without issuance of any required determinations of no hazard to aviation. No work may proceed on a permit where an applicant has failed to provide notices or seek reviews required under applicable requirements. Provided, nothing herein requires compliance with ALUCP standards where such standards have been overruled in accordance with applicable law. Without limiting the foregoing, under the Airport Land Use Compatibility Plan in effect as of April 1, 2022:

- a. In Runway Protection Zone 1, all structures are prohibited except facilities set by aeronautical function. No objects may exceed FAR Part 77 height limits as determined by the FAA. The City shall refer all objects within Zone 1 to the Airport Land Use Commission (ALUC) and FAA.
- b. In Inner Airport/Departure Zone 2, Inner Turning Zone 3, and Sideline Safety Zone 5, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) Structures shall be located the maximum distance from extended runway centerline; and iii) The City shall refer objects greater than 35' tall to the ALUC and FAA.
- c. In Outer Approach/Departure Zone 4 and Airport Property Zone 6, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) The City shall refer objects greater than 70' tall to the ALUC and FAA.
- d. In Airport Influence Area Zone 7, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) The City shall refer objects greater than 100' tall to the ALUC and FAA; iii) New structures are prohibited on existing terrain that penetrates 14 CFR Part 77 surfaces; and iv) New structures require additional airspace analysis and FAA Form 7560 within the 50-foot terrain penetration buffer.
- e. All structures that could penetrate 14 CFR Part 77 elevations shall file Form 7460 with the FAA.

D. Planning Applications and Approvals Required

1. Use Permit Review. All new wireless communications facilities and all modifications to existing wireless communications facilities require a use permit issued pursuant to Section 38-156 et seq., except those subject to administrative review under this section. The use permit for placement in the public rights-of-way, if granted, shall be deemed to constitute the encroachment permit required by Monterey City Code Chapter 32, Article 8. The application for a use permit shall satisfy all the requirements for an encroachment permit, and without limitation any use permit issued shall be subject to all conditions set forth in, and regulations adopted pursuant to, that Chapter.
2. Administrative Review for Temporary Wireless Communication Facilities: A use permit may be issued for a temporary wireless communications facility by the Community Development Director under this section.
 - a. Application. An application for a temporary wireless communications facility shall provide a detailed description of the facility including: how it will be anchored or otherwise supported; where it will be placed; how it will be designed, secured, and marked to protect against harm to persons or property; the purpose of the placement; the duration it will be in place; a certification by a California licensed

structural engineer that the installation will be structurally safe; and the information required by Sections 38-112.4 (E)(3)(a),(b), (q) and (r).

- b. Approval. Administrative approval shall be granted if:
- i. The facility meets the definition of a temporary wireless communications facility;
 - ii. The proposed facility will be placed and protected to prevent hazards to persons and property, and so as not to unreasonably interfere with pedestrian or vehicular traffic or disrupt the use and enjoyment of adjoining properties;
 - iii. There is an appropriate plan for removal of the facility and restoration of property affected by it; and
 - iv. Except in the case of an emergency, the temporary wireless communications facility is not proposed for a residential zoning district (i.e., R-E, R-1, R-2, R-3 and any PC Zone not governed by a Specific Plan).
- c. Conditions. Each permit for a temporary wireless communications facility shall be granted for the shortest period of time it will take to achieve the purposes for which it was installed. The permittee's period for removal and restoration shall be based upon the work required to remove the facility and restore affected property, and shall not exceed ten (10) days except for good cause shown as determined by the Director. Any facility that is not removed from private property by the date specified in the permit is hereby declared a public nuisance, which may be remedied pursuant to Monterey City Code Chapter 22, Article 4 and any other remedy allowed by law. Any facility that is not removed from City property by the date specified in the permit may be removed by the City and the City may restore affected property and charge the permittee the costs thereof.
- d. Emergency Installation. A permit shall be obtained before a facility is installed except: (1) in the case of an emergency declared by federal, state, regional, or local officials; (2) when it is necessary to install a facility to immediately address an unanticipated service outage; or (3) when immediate action by a person or agency performing a public service is required to protect life or property in response to an emergency. In such cases, an application shall be submitted within five business days after the date of installation. The time for filing may be extended by the Director as needed based on the circumstances giving rise to the need for the temporary placement. If an application is not timely filed, or is denied, in addition to being subject to any other remedy available at law or equity, the temporary wireless communications facility will constitute a public nuisance, which on private property may be remedied pursuant to Monterey City Code Chapter 22, Article 4. Without limiting the foregoing, if the temporary

wireless facility is on public property, and a timely application is not filed, or is denied, the facility shall be removed within twenty-four (24) hours of failure to timely file, or the denial, as applicable, unless the Director specifies a later, alternative time for removal and restoration. If the facility is not removed and property restored as required, the City may remove the facility, and restore the property, and charge for costs associated with the same.

E. Applications and Submittals

1. This section establishes minimum application requirements for wireless communications facilities other than eligible facilities requests, for which applications shall be submitted and reviewed as provided in Section 38-112.4(G).
2. Application Required. Each application for a permit under this section shall be submitted on a form prescribed by the Director, in an electronic searchable format, and accompanied by a fee in the amount set by resolution. The Director may amend the submittal form and requirements as the Director deems appropriate to achieve the purposes of this section.
3. Application Content. Each application shall be signed by the owner of the wireless communications facility. If the applicant is not a provider of wireless services, it shall provide a letter from each wireless service provider that will use the facility affirming: it will use the facility proposed, if approved; that it will make available such information as the City may require to act upon the application, either directly or through applicant; and will ensure that any representations made to the City regarding the services it will provide, or equipment it will use, are true, accurate, and complete. Each application shall include at least the following:
 - a. Written Authorizations. A written authorization signed by the owner(s) of the property and supporting structure consenting to the placement of the wireless communications facility as proposed. An authorization is not required as part of the application for placement on City-owned or controlled property, but appropriate consents and contracts shall be obtained before a permit may issue.
 - b. Licenses. Evidence that the applicant and operator hold all current licenses and registrations from the FCC and California Secretary of State where such license(s) or registration(s) are necessary to provide wireless services using the proposed wireless communications facility.
 - c. Notice and Proof of Service of Notice. Applicant shall mail notice of the application to all persons entitled to notice under Section 38-159. In addition to providing the information required by Section 38-159(D), the notice shall provide a brief description of the wireless communications facility and its location; identify what entities will own or operate any part of the wireless communications facility; state that the application may be reviewed online as posted by the Planning

Department; and state that comments may be submitted to the Planning Department. The notice shall be mailed by the applicant on the day the application is filed and a proof of service on a form provided by the City shall be provided with the application.

- d. Effect of Deadlines. To the extent that filing of the wireless application would establish a deadline for action on any other permit, agreement, or other authorization that may be required in connection with the wireless communications facility, the application shall include complete copies of applications for every such required permit, including without limitation, electrical permits, building permits, traffic control permits, and excavation permits, with all engineering completed, and with all fees associated with each permit. Provided, such additional applications are not required if applicant agrees, in the application for the wireless communication facility, that any such deadline will not begin to run until a separate and complete application for those permits is submitted.
- e. Project Description Letter. A full written description of the proposed facility and the work that will be required to install or modify it, which description shall include whether:
 - i. the facility will be on a new, existing, or replacement supporting structure;
 - ii. excavation work will be required and where it will occur;
 - iii. foundational work will be required; and
 - iv. if the application is for a modification to an existing wireless communications facility, or a support structure, the application shall identify whether the existing wireless facility or support structure was installed pursuant to a permit and if so provide the original permit and any permit modifications; describe any camouflage and concealment elements, and describe how the modifications to the facility or proposed support structure will maintain the concealment elements, and how it will preserve other requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, or support structure; and state whether the existing wireless communications facility or support structure is currently in compliance with such original permit and any permit modifications.
- f. Equipment Specifications. Specifications that show the dimensions (height, width, depth, and cubic feet) for all components of the proposed wireless communications facility and the support structure, and the weight of all components of the wireless communications facility and any replacement or new

support structure. If the wireless communications facility will be placed on an existing or replacement support structure, the specifications shall include:

- i. a clear description of all components of the existing support structure, and how it is anchored/supported;
 - ii. a clear description of all attachments to the existing support structure and their dimensions; and
 - iii. a description of changes that will be made in connection with an attachment to, or replacement of, the existing structure, including but not limited to, steps that may be taken to strengthen or secure the supporting structure.
- g. Lease Area. If the wireless communication facility will be installed pursuant to a lease or license, a plan depicting the leased or licensed area in relationship to the proposed facility.
- h. Plot Plan. A plot plan of the lot, premises, or parcel of land showing the exact location of the proposed wireless facility (including all related equipment and cables), exact location and dimensions of all buildings, parking lots, walkways, property lines pertaining to the area leased or otherwise dedicated to the use of the wireless communications facility. For freestanding facilities, the plans shall indicate surrounding grade, structures, and landscaping from all sides. If new ground mounted equipment or structures (retaining walls, etc.) are proposed in the public right-of-way, a site survey with topography lines shown in 1' intervals be submitted. The survey should show all improvements in the public right of way within 10' of the proposed area of disturbance.
- i. Licensed Site Survey. If the project involves new ground mounted equipment, grading or fill, a site survey is required.
- j. Elevations and Roof Plan. Building elevations and roof plan including exact location and dimensions of equipment proposed. For freestanding facilities, the plans shall indicate surrounding grades, structures, and landscaping from all sides.
- k. Screening. Proposed landscaping and maintenance plan for the life of the facility and/or non-vegetative screening (including required safety fencing) plan for all aspects of the facility.
- l. Manufacturer's Updated Specification. Manufacturer's specifications, including installation and maintenance specifications, exact location of cables, wiring, materials, color, and any support devices that may be required.

- m. Photographs and Photo Simulations. Accurate color photographs and photo simulations that show the proposed facility both close up at street level and in context of the site from reasonable line-of-sight locations from public streets or other viewpoints which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as proximity to the site or their elevation relative to the site, together with a map that shows the photo location of each view angle.
- n. Hazard Compliance Certification. For placement of wireless communications facilities on utility poles, street light poles, or towers in the public rights-of-way, as part of the safety certification required by Section 38-112.4(E)(3)(o):
 - i. If the application is for a wireless communications facility in a “High Hazard Zone” (“HHZ”) (as demarcated on the current version of the California Public Utility Commission Fire-Threat Map), and is to be placed on a supporting structure that applicant contends is or will be under the jurisdiction of General Order (“GO”) 95 (“GO 95”), or GO 165, or GO 166, the applicant shall submit documentation showing the HHZ where the wireless communications facility will be located and whether all required Fire Prevention Plans are in place. Applicant shall also submit documentation showing whether the supporting structure has been inspected and when; the results of the inspection (if any), and proof that the structure, any existing facilities, and planned structures and facilities will comply with standards for placement on structures in a HHZ. If existing or proposed structures or facilities are or will be non-compliant in any respect, the application shall identify what applicant will do to ensure the structure and existing and proposed facilities are compliant.
 - ii. If the application is for a wireless communications facility in a HHZ on a supporting structure or tower that applicant contends is not under the jurisdiction of GO 95, GO 165, and GO 166, the applicant shall submit documentation showing:
 - a) The specific HHZ in which the wireless communications facilities will be located, as demarcated on the current version of the California Public Utility Commission Fire-Threat Map;
 - b) A description of the steps the applicant has taken to reduce hazards to public safety, including fire safety hazards, that may be caused by the proposed wireless communications facility or any supporting structure; and
 - c) What applicant will do to inspect and maintain the safety of the wireless communications facility, or any supporting structure which steps shall be at least as rigorous as if GO 95, GO 165, and GO 166 applied.

- d) The documentation shall be supported by sworn statements from qualified and California licensed engineers attesting that the wireless communications facility and any supporting structure as installed will comply with applicable law, and be as safe as facilities and structures which are subject to the General Orders.
- o. Safety Certification. Applicant shall submit structural analyses prepared by a licensed or registered California engineer or engineers qualified to attest to the facts showing that the portions of the wireless communications facility placed on or within the tower or supporting structures will be safely supported by the tower, or supporting structure, and also showing that all components of the structure and the wireless communication facility comply with applicable safety standards.
- p. Noise study. A noise study certified by an acoustical engineer licensed by the State of California for the proposed facility and all associated equipment including environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators, demonstrating that the facility will comply with the city's noise regulations when fully operational. For example, if a wireless communications facility is planned to include multiple cooling units, the noise study will be performed assuming that all the units will be in place and operational. The noise study shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. A study is not required if the proposed facility does not contain equipment that generates noise.
- q. Radio/antenna detail. Information regarding the radio units that are proposed to be installed at the site, including the manufacturer's name and specifications, and the actual frequencies and power levels (in watts effective radio power [ERP]) for the proposed wireless communications facility and for any existing wireless communications facility that shall be considered in determining compliance with FCC RF standards.
- r. Radio Frequency (RF) Compliance Report. Applicant shall submit a RF exposure compliance report prepared by a licensed RF engineer. The report shall include a certification by the engineer that the facility complies with FCC RF standards, be prepared in accordance with FCC guidelines, and include the calculations and information on which the engineer relied. The report shall clearly identify any areas where exposure would exceed occupational or general FCC exposure limits, vertically and horizontally, and shall include drawings that show those areas in relation to the proposed structure, adjoining buildings, and property lines. The report shall clearly identify any measures that shall be taken to ensure compliance with FCC rules. The report's analysis will be based on a "worst case" scenario, and assuming all antennas are operating at maximum output. The report shall be signed by the licensed RF engineer and include a certification, under penalty of perjury, that the content thereof is true and correct.

- s. Underground vault and venting plans, if any element of the wireless communications facility will be placed underground. The underground vault and venting plans shall include manufacturer's specifications for cover, color, materials, dimensions, and reveal at the sidewalk, and evidence that all enclosures will comply with California Public Utilities Code standards for underground utility enclosures.
- t. Master Plan. A master plan which identifies the location of the proposed facility in relation to all existing wireless communications facilities used by the wireless service providers that will use the facility; and if the facility proposed is part of a planned network, the approximate location of other planned facilities.
- u. For any wireless communications facility located within the Monterey Regional Airport Influence Area (AIA), the applicant shall provide written evidence to the City demonstrating the following: 1) applicant submittal to the FAA of the FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or other equivalent FAA form notifying the FAA of the proposed construction or alteration of any wireless communications facility in the AIA that has the potential to obstruct or pose a hazard to air navigation, navigational aids, or navigational facilities, or has the potential to interfere with any aircraft flight components affecting air safety, except for minor alterations that do not have this potential; 2) written authorization from the FAA or other official FAA determination of no objection to the proposed construction or alteration; and 3) compliance with all applicable FAA and FCC rules, regulations, and standards.
- v. If applicant contends that denial of the application would result in an effective prohibition under federal law, or otherwise violate federal law such that the application shall be approved, it shall provide all facts that it relies upon and clear and convincing evidence for that claim. Where the applicant is not a wireless service provider, the information shall be provided for the affected wireless service providers. Applicants who claim that denial would be a "prohibition" or "effective prohibition" are encouraged to address at least the following:
 - i. If it is contended that compliance with an aesthetic standard is not reasonable, explain why in detail, and describe alternatives considered in determining whether service objectives for the wireless service provider could be reasonably satisfied by other means.
 - ii. What existing or planned personal wireless services the affected wireless service provider would be effectively prohibited from providing if the application is denied.
 - iii. The factual basis for any claim that denial will substantially impair a wireless service provider's ability to provide a personal wireless service, and the information relied upon in support of that claim.

- iv. The factual basis for any claim that denial would result in a prohibition or effective prohibition under applicable precedent in the United States Court of Appeals for the Ninth Circuit, and the information relied upon in support of that claim.
- v. Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities (including areas outside the City, if applicable). In order to be treated as probative, maps shall be dated, and based on data collected within the prior six months or less, to reflect all facilities installed inside and outside of the City as of the date of the application that may affect coverage.
- vi. The exact geographic area that would be served by the proposed facility, using coverage maps that describe the distances between the proposed and existing sites that show how the proposed service area fits into and is necessary to each affected wireless service provider's provision of personal wireless services given existing facilities, and planned or pending modifications or additions to those facilities that that may affect the provision of services.
- vii. Alternatives considered within and outside the City prior to the submission of the application, including but not limited to alternatives that take advantage of software capabilities or reconfiguration of existing sites; the reason the alternative chosen was selected, and the reason other alternatives were not selected with supporting evidence; and why applicant contends existing sites could not be used to provide service.
- viii. Provide results of drive tests within the specific geographic areas where an effective prohibition is being claimed. In order to be treated as probative, maps shall be dated, and based on data collected within the prior six months or less, to reflect all facilities installed inside and outside of the City as of the date of the application that may affect coverage. The data shall specify the date and time of the test, the location in longitude and latitude of each point at which signal strength was recorded, and each signal strength recorded for each frequency at which the carrier provides personal wireless services to its customers. The signal strength data shall be provided in a separate table for each frequency. Drive test maps shall be submitted depicting the actual signal strengths recorded during the drive test for each frequency at which the carrier provides personal wireless services to its customers.
- ix. Provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service or interruption of service.

4. Presubmittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a voluntary presubmittal conference with City staff for all wireless communications facilities applications. The presubmittal conference is intended to foster cooperative discussion between applicants and staff, identify potential avoidable issues, and generally streamline the application review process to occur after the applicant formally submits its application. Requests for voluntary presubmittal conferences will not be scheduled until the city receives payment of the associated fee in the amount set by City Council resolution.
5. Application Submittal Appointment. All applications for wireless communications facilities use permits shall be submitted to the City at a prescheduled appointment with the Director. During the application submittal appointment, or thereafter, the Director shall review the application materials and determine whether the application is complete. If the application is found to be complete, the Director will refer the application to the Planning Commission. If the application is not complete, the Director shall issue a written notice of incompleteness specifying the information missing from the application.
6. Applications Available Online. Except where good cause has been shown, as determined by the Director, applications will be posted on the City website within five working days of filing or as soon thereafter as practical, along with communications between the City and the applicant regarding those filings (including additions and modifications to the filing). The City shall post notice promptly when the application is deemed “complete.” The City’s failure to post the applications by the time required shall not affect the validity of any application submitted under this section.
7. Notice of Applications Within Monterey Regional Airport Influence Area. For any wireless communication facility located within the Monterey Regional Airport Influence Area, the City shall, upon deeming such application “complete”, provide written notice of the application to the staff of the Monterey County Airport Land Use Commission and the Monterey Regional Airport District.

F. Location, Design and Development Standards

1. This section establishes design and development standards for wireless communications facilities and supporting structures, other than wireless communications facilities and supporting structures modified as part of an eligible facilities request. The Planning Commission may develop and approve, for mandatory use, neighborhood specific design standards that are consistent with this section.
2. Overall Goals. It is the overall goal of the City to minimize the visual impact of wireless facilities; to minimize the number and height of supporting structures that may intrude upon view sheds; to maintain the overall visual character of individual neighborhoods, to encourage placement away from residential units; to minimize the number of structures in the public rights-of-way and prevent interference with the other uses of the public rights-of-way.

3. General Principle for All Locations. The proposed wireless communications facility, and any supporting structure (to the extent installation requires installation of a new or replacement supporting structure, or any change in the height of an existing supporting structure) shall be of the minimum size necessary to serve the defined service objectives of the wireless service provider(s) that will be using the facility.
 - a. Exception. Section 38-112.4(F)(3) does not apply when a larger facility is consistent with a stealth design approved by the City, or appropriate as part of the incorporation of a wireless communications facility into a structure such as a street light, where the facility shall mimic the height of existing street lights.

4. Design Standards for Facilities Off the Public Rights-of-Way - General Design and Aesthetic Standards. All new facilities and changes to existing facilities shall conform to the standards in this section.
 - a. Concealment. Wireless communications facilities shall incorporate concealment elements sufficient to render the facility stealth, as appropriate for the proposed location and design, or otherwise incorporate elements that will camouflage or limit the visual impacts of a wireless communications facility as well or better than a stealth facility. All facilities shall be designed to visually blend into the surrounding area and shall be compatible with the character of the area in which they are located, as described in the General Plan and provisions governing development of particular areas.
 - b. Height. Wireless communications facilities, and any supporting structure shall not exceed the applicable height limit for structures in the applicable zoning district.
 - c. Setbacks. Wireless communications facilities may not encroach into any applicable setback for structures in the applicable zoning district.
 - d. Future Collocations. Applicants shall design wireless communications facilities to accommodate future collocated facilities to the extent feasible, and to the extent consistent with the other provisions of this Code.
 - e. Noise. A wireless communications facility shall comply with the noise standards in the City Code. Applicant may be required to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the City deemed necessary or appropriate to ensure compliance with noise limits.
 - f. Lights. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and shall 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, or applicant shows that the light's effect is negligible. All aircraft warning lighting shall use lighting enclosures that avoid illumination

impacts to properties in the City to the maximum extent feasible. This section does not apply to designs that are intended to mimic or to be incorporated within lighting structures on the property where the facility will be located.

- g. Signs. No wireless communications 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, provides the facility owner's unique site number, and a local or toll-free telephone number to contact the facility owner's operations center. "Signage" does not include approved banners or directional signage used to conceal a or camouflage a wireless communications facility.
- h. Fencing or Enclosures. Any fencing or enclosures proposed in connection with a wireless communications facility shall blend with the natural and/or manmade surroundings. Additional landscape features may be required to screen fences. Barbed wire, razor ribbon, electrified fences and similar measures for securing a wireless communications facility are not permitted.
- i. Landscaping. Landscaping may be required to visually screen facilities from adjacent properties or public view or to provide a backdrop to conceal the facilities. All proposed landscaping is subject to architectural review approval by the Director, unless the Director 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. To provide screening of wireless communications facilities and access roads appurtenant to the wireless communications facility which screening may require planting of additional trees and other vegetation around the facility, and along access roads.
- j. Applicants shall use flat rate electric metering, if available, so that no meter is required. If a ground-mounted or pole-mounted meter is used, applicant will provide information as to available form factors and show how those can be incorporated into the design to minimize visual impacts and, where possible, make the meter stealth.
- k. Ground-Mounted Equipment. Where above-ground, ground-mounted facilities are permitted, in locations visible or accessible to the public, applicants shall 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).

5. Building-Mounted Facilities. These requirements are in addition to design standards in Section 38-112.4(F)(4)(a)-(g) and (k).
 - a. General Design Preferences. Building-mounted wireless communications facilities shall be one of the following, in this order of preference; provided that any change to any building within the National Historic Landmark Districts, local historic district (H-D) or any change to individually zoned historic property (H-1 and H-2) shall be fully consistent with design requirements and limitations on modifications to historic properties and buildings.
 - i. The wireless communications facilities shall be completely concealed and architecturally integrated into the facade or rooftop-mounted base stations with no visible impacts (including shadowing) 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, provided such replacement is consistent with the historic preservation of a structure); then
 - ii. Wireless communications facilities may be 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), subject to height limits applicable to the area where the facility is located, and subject to standards that apply for similar modifications that do not involve wireless communications facilities.
 - b. Rooftop-Mounted Equipment. Consistent with Section 112.4(F)(5), and subject to Section 38-112.4(F)(5)(a)(i), and subject to Section 112.4(F)(4)(a), the City will not approve unscreened rooftop wireless communications facilities if the applicant has the right to increase the facility height so that the equipment would become visible to public view from ground level on adjoining properties or from the public rights-of-way, unless the applicant shows that because of the design proposed, or the location, approval of the design will be no more intrusive and consistent with the goals of this section.
 - c. Facade-Mounted Equipment. Applicants shall 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 façade, unless the applicant shows that because of the design proposed, or the location, approval of the design will be no more intrusive and consistent with the goals of this section.

6. Freestanding Towers Outside of Rights-of-Way. In addition to satisfying the requirements of Section 38-112.4(F)(4):

- a. General Design Preferences. All applicants shall, to the extent feasible and appropriate for the proposed location, design wireless communications facilities on new towers according to the following preferences, ordered from most preferred to least preferred:
 - i. Faux architectural stealth structures including, but not limited to, sculptures, clock towers, and flagpoles of a size, type and proportions, and with design features consistent with the neighborhood and adjacent structures; then
 - ii. Faux trees in a stealth design of a size, type and proportions consistent with nearby trees, and landscaped and located near other vegetation to blend in and appear part of the natural environment.
- b. Tower-Mounted Equipment. All tower-mounted equipment shall be mounted as close to the tower as possible, or integrated within it to reduce its visual profile. Applicants shall 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, and to the extent not inconsistent with a design under Section 38-112.4(F)(6)(a).
- c. Ground-Mounted Equipment. All equipment should generally be incorporated into the design of a tower proposed pursuant to Section 38-112.4(F)(6)(a)(i)-(ii). Where that is not technically feasible, and unless undergrounded, applicants shall use a stealth design or may be permitted to conceal ground-mounted equipment with opaque fences or other opaque enclosures, consistent with Section 38-112.4(F)(4)(a) provided that the concealment can be maintained throughout the term of the permit. The City shall 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.

7. Public Rights-of-Way Facilities.

- a. Limitation on facilities permitted. The only wireless communications facilities permitted in the public rights-of-way are:
 - i. Modified facilities which shall be permitted pursuant to an eligible facilities request, or

- ii. Wireless communications facilities used in the provision of personal wireless services, which, absent a showing of effective prohibition, shall be small wireless facilities; or
 - iii. Wireless communications facilities, or other wireless equipment or structures that the City shall permit a person holding a state or local franchise to install pursuant to that franchise.
- b. Structure Preference. The City's preference for wireless communications facilities in the public right-of-way in order of preference is as follows:
 - i. Locate antennas on existing or replacement light poles and other vertical structures owned or controlled by City that City chooses to make available for placement of wireless communications facilities; then
 - ii. Locate antennas on existing or replacement supporting structures; then
 - iii. New support structures or towers in the public rights-of-way.
- c. Wireless communications facilities in the public rights-of-way shall be designed in compliance with Section 38-112(F)(4), except,
 - i. Setback requirements applicable to private property do not apply (requirements for setbacks from curbs and walkways applicable to users of the public rights-of-way, as well as sight line requirements do apply);
 - ii. Wireless communications facilities and any support structure shall satisfy the height requirements of this subsection 7;
 - iii. Fencing and enclosure requirements applicable to private property do not apply (requirements related to fencing required to prevent hazards to pedestrians or vehicles, as may be required by applicable design manuals, do apply).
- d. Undergrounded Equipment. Applicants shall comply with applicable undergrounding requirements, including the requirements of Section 32-08.03-04. Vaults shall be installed as if the same were subject to regulation by the California Public Utilities Commission, and shall satisfy that agency's safety standards.
- e. Ground-Mounted Equipment. To the extent that the applicant qualifies for a deviation or exception from an undergrounding requirement, applicants shall only install the antenna and wiring on the support structure, or tower and all other equipment shall be ground-mounted, unless:

- i. ground-mounted equipment cannot be installed consistent with other applicable requirements, including the encroachment conditions; or
 - ii. where part of an approved stealth facility, or if integrated into a design for a street light pole or other vertical structure which design conforms to, and is consistent with the design of those facilities; or
 - iii. based on the permitted location, and available designs, placement of equipment on the support structure or tower will have a lesser overall impact on properties affected by the placement, and on pedestrian or vehicular use of the public right-of-way.
- f. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:
 - i. Self-Contained Cabinet or Shroud. City may require placement of the equipment in a cabinet or shroud to conceal equipment, or where appropriate to protect persons or property. The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna, or the meter, if one is required and cannot be integrated into the cabinet. All cables and conduits associated with the equipment shall be undergrounded to the supporting structure or tower.
 - ii. Size. The equipment, excluding the meter and disconnect and including the cabinet, shall be the smallest size feasible but no larger than 16 cu. ft., and no higher than 50 inches above ground level, except that a larger size may be approved as part of a stealth design. Electrical meters, if required, and disconnects shall be the smallest possible size available.
 - iii. Stealth Design and 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, or to otherwise take steps to camouflage or minimize the visual impacts of the proposed design, including strategic placement in less obtrusive locations and placement within existing or replacement street furniture, or integration into the base of an existing or replacement supporting structure.
- g. Pole-Mounted Equipment. Other than antennas, equipment mounted on the exterior of an existing or replacement support structure (referred to herein as “pole-mounted equipment”) is permitted if an applicant shows it is not required to install the equipment underground; that ground-mounted equipment is not required, or cannot be installed at a proposed location in a manner that complies with the requirements of this Code; and applicant cannot integrate the equipment within an existing or replacement supporting structure approved by City. Pole-mounted equipment other than antennas shall be installed as close to the support structure as technically and legally feasible to minimize impacts to the

visual profile, and positioned on one side of the pole to minimize visibility. If a facility shall be permitted in a residential area, the wireless communications facility shall be placed to minimize visibility from doors and windows of the residential properties closest to the wireless communications facility, and subject to other provisions of this Code, to mimic other structures commonly mounted on utility poles. All required or permitted signage in the public rights-of-way shall face toward the street or otherwise be placed to minimize visibility from adjacent sidewalks and structures, except as inconsistent with the encroachment conditions in Chapter 32. All conduits, conduit attachments, cables, wires and other connectors shall be concealed from public view to the greatest extent feasible.

- h. Antennas. Antennas shall be placed in a radome at top of the pole, so that the antenna appears to be an extension of, or a design element integral to, the supporting structure or tower, and so that the cable connections, antenna mount and other hardware are concealed, with cut-outs if required for signal propagation. The total volume of each antenna shall not exceed 3 cu. ft., not including the connector to the supporting structure. GPS antennas shall be placed within the radome or directly above the radome not to exceed six inches.
- i. Extensions of structures and antenna height. To maintain consistency with the height of other, similar structures in the public rights-of-way, and as means of reducing and concealing the placement of an antenna, an antenna added to an existing supporting structure, or tower, including any extensions of that supporting structure or tower; or a replacement for an existing supporting structure or tower, may cumulatively add no more than four feet to the height of the existing structure, or the minimum amount required to obtain separation from electrical facilities on the pole. Provided that, City may permit a greater extension to street lights poles or other vertical structures that it owns or controls where that extension is consistent with the design of the supporting structures, and can be installed without adversely affecting the overall design of similar facilities in the same corridor.
- j. Pole-Mounted Equipment Cabinets. Except when integrated within a supporting structure or tower, all equipment other than the antenna(s) and disconnect switch shall be concealed within an equipment housing. Generally, all equipment other than the meter or disconnect associated with a wireless communications facility shall be enclosed in a single equipment housing, unless applicant demonstrates that an alternative design will be less visible and more consistent with other pole-mounted equipment in the same portion of the public right-of-way. The equipment housing on the exterior of any supporting structure shall be centered and placed on a single side of the structure. Equipment housing mounted on the pole shall be no greater than 15 inches wide and 15 inches deep so that the housing is not readily visible to a reasonable observer on the opposite side of the pole. Wider equipment housing units are permitted where, consistent with a stealth design, such as signage placed at an appropriate height (a stop

sign, for example). Equipment housing shall be of a uniform depth, not exceeding 15" from the pole to which it is attached so that it appears, as far as possible, like part of the pole. All pole-mounted equipment shall be installed as flush to the pole as possible. Any standoff mount for the equipment cage may not exceed four inches and shall include metal flaps (or "wings") to conceal the space between the cage and the pole. Sizes are intended to be cumulative, reflecting the sizes of the equipment housings for all wireless facilities installed on a particular supporting structure. Total volume of all equipment housing on any support structure and strand within 20 feet of the attachment shall not exceed 16 cu. ft.

- k. Exterior mounted equipment housing shall be placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and with the lowest edge of any exterior mounted equipment at least eight feet above ground level. Equipment shall not project over any street unless above the level approved for placement of wires across streets.
- l. Decorative Light Poles. Pole-mounted facilities are prohibited on decorative light pole fixtures where the height of the existing structure is 20 feet or less.
- m. Towers or New Supporting Structures. If a new supporting structure is permitted:
 - i. City may require or approve installation of a light pole of a stealth design and consistent in height and appearance to other light poles in the corridor, provided that the lighting is consistent with lighting plans for the area; and alternatively, the City may require or approve installation of a structure no higher than utility poles in the corridor in which it will be located, and if none, no higher than 35 feet.
 - ii. Unless a stealth design can be reasonably used at the proposed location, the new support structure shall be a hollow, non-wood pole, in which all elements of the wireless communications facility other than antennas, undergrounded equipment, or equipment in approved ground-mounted facilities may be concealed. It shall be colored and incorporate other elements, including camouflage and landscaping if appropriate at the location proposed, to minimize its visual impact.
 - iii. City shall be permitted, at no charge, to attach and maintain traffic or similar signage or other devices; and City may require, as a condition of approval, sharing of the facility with others to minimize the need for additional facilities in the public rights-of-way.
- n. Strand mounting. Wireless communications facilities requiring a permit under this section may not be mounted on strand.

camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.

- b. Parcels and public rights-of-way in industrial districts. Within this area, preferred designs in order of preference are: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.
- c. Parcels and public rights-of-way in commercial districts. Within this area, preferred designs in order of preference are: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.
- d. City-owned or controlled parcels other than those listed in Section 38-112.4(F)(9)(a) Within this area, preferred designs in order of preference are: a. Placement on existing towers or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting

structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.

- e. If the provider shows it shall be permitted to place the wireless communications facility in a non-preferred area, the preferred designs in order of preference: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing structures in a stealth configuration; b. Non-residential building-mounted facilities with rooftop mounted antennas; c. Non-residential building-mounted facilities with façade-mounted antennas; d. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; e. New towers or supporting structures in a stealth design; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties. Additionally, if the non-preferred area is identified as a residential or historic district, placement in open space areas or the public rights-of-way adjacent to open space areas is preferred if the result is that the facility will be farther away from residences.

10. Special Considerations for Certain Districts: In addition to satisfying the standards in this section, in certain districts and at certain locations, an applicant shall show that denial of an application will result in an effective prohibition or otherwise violate federal law such that an application shall be approved and show that the design used and the placement will minimize the impact of granting the permit (these showings are referred to as an "effective prohibition showing"):

- a. In H-1, H-2 and H-D, overlay zones, any wireless communications facility shall be either a stealth facility, or a facility that is not visible to the general public (a rooftop facility, for example), and is subject to conditions that would prevent it from becoming visible to the general public as a matter of right. Any other placement requires an effective prohibition showing.
- b. In any residential zoning district (R-E, R-1, R-2, R-3, and PC zones not governed by a Specific Plan), placement of a wireless communications facility requires an effective prohibition showing.
- c. Placement of a wireless communications facility within 100 feet of any parcel either in the R-1 zoning district or in PC zones that cover Skyline Forest but not governed by a Specific Plan requires an effective prohibition showing.

- d. In any portion of any district where there are no utility lines aboveground in the public rights-of-way, and no street lights or traffic signals, placement of a wireless communications facility requires an effective prohibition showing.
- e. For wireless communications facilities proposed for the public rights-of-way in any portion of any district (other than residential zoning districts – R-E, R-1, R-2, R-3 and PC zones not covered by a Specific Plan) with aboveground street lights or traffic signals in the public rights-of-way, but no aboveground utility poles, an effective prohibition showing is required unless the City determines that the wireless communications facility will be integrated into those street lights or traffic signals in a manner consistent with the requirements of this Code.
- f. For wireless communications facilities proposed for the public rights-of-way, in order to avoid visual clutter the wireless communications facility shall meet the following spacing requirement: no proposed wireless communications facility shall be placed in the public right-of-way within 250 feet in any direction from an existing facility unless required by federal law.
- g. Notwithstanding the foregoing, with respect to wireless communications facilities proposed for the public rights-of-way, an application may be granted if applicant shows that issuance of a permit is required by state law. To the extent applicant claims that its proposed facility would not incommode the public, City will consider factors relevant to that determination under state law, including whether it diminishes public use or enjoyment, either visual or physical, of the public right of way, or of adjoining properties.

G. Eligible Facilities Requests. This section applies to eligible facilities requests, as that term is defined under federal law and applicable regulations.

- 1. Applications. Applications for eligible facilities requests shall contain the information required by Section 38-112.4(E)(3)(a)-(s) and (u-v), and shall be submitted in the manner required for all other applications.
- 2. Justification. Without limiting the foregoing, the project plan for an eligible facilities request shall specifically list every element that shall be satisfied in order for a request to be an eligible facilities request under federal law, and shall show that each element is satisfied.
- 3. Notwithstanding Section 38-112.4(J)(2) below, an application submitted as an eligible facilities request shall be approved by the Director if the following findings are made:
 - a. That the application qualifies as an eligible facilities request;
 - b. That the proposed facility will comply with all generally-applicable laws; and
 - c. The finding required by Section 38-112.4(J)(3), if applicable.
- 4. If an application submitted as an eligible facilities request is not an eligible facilities request, it shall be denied and, in addition to the notice required by Section 38-

112.4(J)(4), the Director shall provide an incompleteness notice indicating what information is required for the applicable wireless application. The Director's decision on an eligible facilities request application is final and not appealable.

H. Abandoned or Decommissioned Facilities

1. Procedures for Abandoned or Discontinued Facilities.

- a. To promote the public health, safety and welfare, the Director may declare a facility abandoned or discontinued when:
 - i. The permittee notifies the Director 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 Director that states the basis for the Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or
 - iii. The permit expires, in the case where the permittee has failed to file a timely application for renewal.
- b. If the Director declares a facility abandoned or discontinued, Director shall mail a notice of declaration to the last known address of permittee and the permittee shall have 90 days from the date of the notice(or longer time as the Director may approve in writing as reasonably necessary) to 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.
- c. If the permittee fails to remove the facility as required by Section 38-112.4(H), the City may exercise any rights or remedies to abate the public nuisance pursuant to City Code chapter 22, Article 4, and exercise any other remedy allowed by law.

- I. 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. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to Section 38-221, and to exercise any other remedy allowed by law. The written notice required in this section shall 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 all permit terms and conditions.

J. Notices—Findings—Decisions.

1. Notice.

Notice Required for a Use Permit. The Planning Commission shall conduct a noticed public hearing in accordance with Section 38-159.

2. Use Permit Findings. In addition to the findings required by Section 38-161, the Planning Commission may approve an application for a use permit if, based on the record, it finds:
 - a. The facility will comply with Section 38-112.4(C), General Requirements; and
 - b. The facility satisfies the applicable design standards set forth herein; or
 - c. The applicant proves that denial would result in an actual or effective prohibition or otherwise violate applicable law, such that the City is required to permit applicant to install a wireless communications facility, and the wireless communications facility adheres to the design standards except to the minimum extent necessary to avoid an effective prohibition. By way of example, and not limitation, if applicant shows a larger antenna is required than is permitted under the design standards, application of this section would permit a larger antenna, but not placement of cabinets aboveground.
3. Additional Finding Required for All Applications within the Monterey Regional Airport Influence Area. In addition to other findings required by this section, for a wireless communication facility located within the Monterey Regional Airport Influence Area, the Planning Commission shall find that the applicant has demonstrated the following: 1) applicant submittal to the FAA of the FAA Form 7460-1 Form, Notice of Proposed Construction or Alteration, or other written notification to the FAA of the proposed construction or alteration of any wireless communications facility in the AIA, except for minor alterations that do not have a potential to obstruct or pose a hazard to air navigation, navigational aids, or navigational facilities; 2) written authorization from the FAA or other official FAA determination of no objection to the proposed construction or alteration; and 3) compliance with all applicable FAA and FCC rules, regulations, and standards.
4. Written Denial Decision. If the application is denied, the City shall provide the applicant written notice of the denial decision that contains both the decision and the findings for the decision or indicates how a copy of the decision and the findings may be obtained.
5. Denials Without Prejudice. The Director may deny an incomplete application without prejudice to the applicant refiling, if the applicant has not provided all of the information required by notice(s) of incompleteness to permit the City to approve, approve with conditions, or deny the application, taking into account legal deadlines affecting the City conducting, or the public participating in, a timely review of the application. Such a denial may be appealed to the Planning Commission, but the appeal is limited to consideration of whether the application was properly denied for incompleteness and the decision of the Planning Commission is final and not appealable.

6. Appeals. Any interested party may appeal an action of the Planning Commission, except for any decision made pursuant to Section 38-112.4(J)(5) in accordance with Chapter 38, Article 27.

K. Independent Consultant Review.

1. Deposit. The applicant shall pay for the cost of any independent consultant retained by the City to review any issue or evidence submitted in connection with the application and for the technical consultant's testimony in any hearing as requested by the City and shall 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. Once the deposit is reduced to 50% the applicant shall restore the fund to its original amount. Promptly upon issuance of the final decision on the application, City shall issue an invoice, showing as a credit against the amount owed the amount deposited; return any amounts deposited in excess of the invoice; and bill for any expense not covered by the invoice, which invoice shall be paid within thirty (30) days.

L. Additional Conditions of Approval for Wireless Use Permits.

1. Standard Conditions for Use Permits. Generally, City shall include appropriate conditions consistent with other use permits it issues.
2. Permit Term. Any validly issued conditional use permit for a wireless communications facility will automatically expire at 12:01 a.m. local time exactly 10 years and one 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. Provided that:
 - i. Permits for eligible facilities requests shall expire on the date the underlying permit expires.
 - ii. Where City is required by federal law or regulation to issue a permit, and the federal law or regulation is changed, or declared invalid, it shall be a condition of the continuing validity of the permit that the City may amend the permit to include any condition that it could have included in the absence of the changed or invalid law or regulation. Alternatively, City may terminate the permit where the placement would not have been permitted. *Provided that*, a permittee will be provided a reasonable opportunity to show the Planning Commission that the wireless communications facility should be allowed to remain in place under then applicable laws and regulations.
3. Ongoing Compliance. City may inspect and test wireless facilities to ensure ongoing compliance with permit conditions, and charge the cost of the inspection to persons holding wireless permits for the facilities inspected. Testing and inspection may include, but is not limited to, testing to ensure compliance with RF exposure limits. Tests may be

based on complaints received, or may be part of a regular testing and inspection program. Permittee shall, within 30 days of a request therefor, provide the City with access and information it may require regarding the wireless communications facility in order to inspect or conduct testing.

4. Disconnection. The permittee shall provide the City with access to the facility to disconnect it from power in an emergency.
5. Maintenance of Elements Designed to Reduce Visual Impacts. Without limiting the general obligation to maintain the site and facility, all concealment elements shall be maintained in a manner so that the concealment elements are not defeated. By way of example, if a stealth facility is approved, it shall be maintained so that color fading and damage do not result in changing the approved appearance of the facility. Likewise, requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, shall be maintained so that the effectiveness of the same is not diminished. By way of example and not limitation, if permittee is entitled to increase the size or number of ground cabinets, and the placement is subject to requirements designed to conceal cabinetry, the existing requirements will also be read to require concealment of the additional or larger cabinets.
6. Construction Period. Unless a permit specifically provides otherwise, in order to prevent applicants from applying for unnecessary facilities, or from stockpiling locations, it is a permit condition that a wireless communications facility shall be constructed and shall be in use for the provision of wireless services within twelve (12) months of issuance of the use permit. The period may be extended by the Director for good cause shown.
7. Modifications. No modification may be made to the approved facility without obtaining a permit required by Section 38-112.4.
8. Removal upon Termination. Upon termination of the wireless permit, unless renewed, permittee shall remove the wireless communications facility and all improvements installed in connection with the facility (including but not limited to a supporting structure, or an extension to a supporting structure), and restore the site to a condition compliant with all applicable codes and consistent with the surrounding area.

M. Post Construction Reporting.

1. Permittee shall notify the City within 30 days of completion of construction of a wireless communications facility, and shall provide as-built plans showing all elements of the wireless communications facility and supporting structure as built. The plans, without limitation, shall show the location of power and communication lines serving the facility, and the location of disconnect boxes. City shall promptly inspect the facility to ensure compliance with all permit conditions, and shall charge the permittee the costs thereof.
2. Within 30 calendar days following the activation of any wireless communications facility (including a modification that affects the RF emissions patterns of the wireless

communications facility), the applicant shall provide a radio frequency emissions compliance report to the city prepared and certified by a RF licensed engineer. The report shall be prepared in accordance with FCC guidelines and shall include the calculations and information on which the engineer relied. The report shall: clearly identify any differences between the facility as proposed and the facility as built, including differences in areas where RF emissions exceed the FCC's general and occupational levels, and any necessary mitigation measures. In addition, the report shall include:

- a. A certification of compliance with all mitigation measures required by the use permit.
 - b. The date and time of the inspection, the methodology used to make the determination, including certification documents of test equipment.
 - c. The name and title of the person(s) conducting the tests.
 - d. Information on whether the levels of radio frequency emissions comply with applicable FCC standards, and identify the source or sources of any non-compliance.
3. If the report shows that FCC general and occupational exposure levels are exceeded in areas that were not reported in the application; or that necessary mitigation measures have not been implemented; the permit for any wireless communications facility that bears responsibility in whole or in part for the non-compliance will be deemed suspended pending correction. As part of the suspension, general operations shall cease until the facility is brought into compliance, and mitigation measures implemented. If the City finds that the correction or mitigation either requires a change to the facility inconsistent with the use permit; or that the necessary mitigation measures would adversely affect the community in a manner not contemplated in the review of the application, it may require removal, relocation or modification of the wireless communications facility as a condition of ending the suspension, or take any other permitted enforcement action. The City may require applicant to provide additional reports, and may require additional independent technical evaluation of the wireless communications facility, at the applicant's sole cost, to ensure compliance with FCC standards and to ensure appropriate mitigation measures have been implemented.

N. Municipally-Owned or Controlled Property and Supporting Structures.

1. Policy Statement. The City may negotiate agreements for use of city owned or controlled property and supporting structures for the placement of wireless communications facilities, including street light poles in the rights of way. In exercising its decision to agree to access to a City property or supporting structure, the City will generally consider factors and consider designs consistent with this section. Any design shall be consistent with the supporting structure to be used, and result in no uncompensated cost to City. Without limitation, for example, the design for a wireless

communications facility to be attached to a street light shall be consistent with designs in use along the corridor or (if more consistent with plans for the corridor) consistent with planned designs. Further, use will not be permitted if it requires the City to incur uncompensated costs, or accept risks or liability it would not otherwise face. Access will only be granted if it presents no safety issues, causes no harm to a structure, does not interfere with present or planned uses of the property or structure, and is in the City's best interests as facilities owner. Subject to lawful limits imposed by state or federal law, the agreement shall specify the compensation to the City for use of the property or structures. Except as prohibited by law, the person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.

2. Requests for Use. A request for use of a City-owned property or structure may be submitted to Community Development Director. The request can be submitted before an application is submitted to the Planning Commission, so long as the requesting party agrees that the request does not trigger any shot clock with respect to any permit that may be required for deployment of the structure. Community Development Director is authorized to negotiate agreements for use of City-owned or controlled supporting structures, and to bring those agreements to the City for approval. Community Development Director may also issue a written denial of access, stating reasons therefore. If City receives multiple, conflicting requests for placement of wireless communications facilities for the same location from different entities, City, may require consolidation of wireless communications facilities or, allocate sites on any basis consistent with applicable law.
3. Compliance with RF Standards. No permit and no agreement for use of city owned or controlled supporting structures, shall be issued or effective unless it is shown that the wireless communications facility will comply with Federal Communication Commission ("FCC") regulations governing radio frequency ("RF") emissions. Every wireless communications facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any agreement.
4. Non-Interference. Before a wireless communications facility is attached to city owned or controlled supporting structure, the owner of the wireless communications facility shall submit a study showing that the attachment or modification will not interfere with then-existing or planned City uses of the structure, including communications uses. Any request for use shall include detailed drawings and specifications so that the City may determine whether there will be interference with City uses.

O. Pre-Approval of Designs.

1. Alternative. A person who wishes to install a wireless communications facility with a design that does not comply with the design standards set forth in Section 38-112.4(F), but who believes that the design is fully consistent with the goals of this Section may submit a request for pre-approval of the design to the Planning Commission. A pre-

approval request is not mandatory, and is not an application for a wireless communications facility within the meaning of this section, and shall be submitted with a clear statement that consideration of the request is not subject to any FCC shot clock or other mandatory timeline for action. The purpose of permitting the request is to encourage development of, and provide a means for public consideration of those designs.

2. Consideration. The proposed design will be publicly published, and the Planning Commission may conduct such investigations, and require the person requesting pre-approval to submit such information, and provide such mock-ups as may be necessary to evaluate the impact of the design. If, after a full opportunity for public hearing the Planning Commission finds that the design serves the goals of this Section, it may recommend pre-approval to the City Council for the placement as a design permitted under Section 38-112.4(F)(1)-(10). The recommendation may limit areas where the facility would be pre-approved for placement. The Planning Commission may also recommend elimination or modification of any pre-approved design, after a public hearing where it finds that the design as adopted does not serve the purposes of this Section.
 3. Council Action. The Council may pre-approve the design by resolution. The design will be published. Council may also eliminate or modify a pre-approval.
- P. Definitions. Except where otherwise expressly incorporated into a provision of the Code, the following definitions only apply to this Section 38-112.4, and shall not be construed to define the same terms found in any other section of this code.

“Accessory equipment” means any equipment associated with the installation of a wireless communication facility, including but not limited to cabling, generators, fans, air conditioning unit, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“ALUC” means the Monterey Airport Land Use Commission or successor agency.

“Antenna” means any system of wires, poles, rods, reflecting discs, dishes, whips or other similar devices used for transmission or receptions of electromagnetic waves. A device where the antenna is integrated with the radio unit shall be treated as an antenna.

“Base station” has the same meaning as the term used in 47 CFR Section 1.6100(b)(1), as may be amended, except that, to the extent not included within the FCC definition, the term includes accessory equipment.

“Camouflage” means a wireless communications facility or supporting structure to which the applicant applies some concealment techniques in order to blend all or a portion of the facility or structure into the surrounding area or to appear to be an object that is congruent with its environment, but which is not designed to look like some feature other than a wireless communications facility to a reasonable person.

“City Manager” means the City Manager or the Manager’s designee.

“Community Development Director” or “Director” means the Community Development Director or the Director’s designee.

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

“Eligible facilities request” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(3), as may be amended. “Eligible support structure” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(4), as may be amended.

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

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

“Mock-up” means a temporary, full-sized, structural model built to scale chiefly for study, testing, or displaying a wireless communications facility. It is nonfunctional and has no power source.

“Modification” means a change to an existing wireless communications facility that involves a change to the size, physical configuration, appearance, height, weight or structural loading of the existing wireless communications facility or its supporting structure, or which results in an increase in the noise emitted by the wireless communications facility. Modification does not include repair, replacement or maintenance if those actions do not involve a change to the size, physical configuration, appearance, height, weight or structural loading of the existing facility or its supporting structure, or result in an increase in the noise emitted by the wireless communications facility. Modification does not include removal unless the facility is replaced, and the replacement would constitute a modification.

“Mounted” means attached or supported.

“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.

“Rooftop Mounted” means mounted directly on the roof of any building or structure, above the eave line of such building or structure.

“Shot Clock” means a timeline for action on an application for a wireless communications facility that is imposed by state or federal law or regulations.

“Site” means the same as defined in 47 CFR Section 1.6100(b)(6), as may be amended.

“Small wireless facility” means the same as defined in 47 CFR Section 1.6002. , as may be amended.

“Stealth” means a wireless tower or base station designed to look like some feature other than a wireless tower or base station to a reasonable person. 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.

“Supporting Structure” means any structure, other than a tower, capable of supporting, or supporting a Base Station. An existing supporting structure is a structure in place at the time an application is filed; a replacement supporting structure is a structure that replaces an existing structure, which structure shall be removed; a new supporting structure is a structure other than a tower, that is not in place at the time an application is filed, and that will be constructed as part of the placement of the Base Station.

“Temporary wireless communications facility” means a wireless communications facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster requires additional service capabilities. Temporary wireless communications facilities include without limitation, cells on wheels (COW), sites on wheels (SOW) and cells on light trucks (COLTs) or other similar wireless facilities: (1) that will be in place for no more than 60 days (or such other longer time as the City may allow); (2) for which required notice is provided to the FAA; (3) that do not require marking or lighting under FAA regulations; (4) that will be less than 100 feet in height; and (5) that will either involve no excavation or involve excavation only as required to safely anchor the facility, where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet.

“Tower” means the same as defined in 47 CFR Section 1.6100(b)(9), as may be amended.

“Transmission equipment” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(8).

“Utility Pole” means any wood, steel, concrete or other structure used primarily to support overhead electric or communications lines.

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

“Wireless communications facility” means all elements of a facility at a fixed location used in connection with the provision of any FCC licensed or authorized wireless service to the public, including the base station and tower, if any, but excluding the supporting structure to which the base station is attached or within which it is enclosed. Provided that, the term does not include:

- a. wireless devices entirely enclosed within an existing building outside of the rights of way, where installations does not require a modification of the exterior of the building;
- b. wireless devices attached to the exterior of a building, which would constitute an accessory use of the building permitted under this Code, and where the wireless communications facility located on the exterior is less than 3 cubic feet in size;
- c. Amateur radio antennas (including ham and shortwave).
- d. Over-the-air reception devices (“OTARDs”) as defined in 47 CFR Section 1.4000 et seq., as may be amended or superseded.
- e. Wireless communications facilities owned and operated by the City for its use, or by any governmental agency for its own or public safety uses.
- f. The exemptions under subsections (c)-(d) do not apply to the extent the facility is used for any purpose, or integrates any wireless facility such that the entire facility is not required to be treated as an “amateur radio antenna” or an OTARD under FCC rules. By way of example, if an antenna is used in the provision of personal wireless services, it is not treated as an OTARD.
- g. The exempt facilities remain subject to other provisions of the Code. By way of example, and not limitation, a modification to an historic structure to install a wireless communications facility exempt under this provision of the Code would be subject to review under other provisions of the Code governing modifications to historic structures.

“Wireless service provider” means the FCC licensed or authorized entity offering wireless communication services to the public.

SECTION 5: If any section, subsection, line, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council of the City of Monterey hereby declare that it would have passed this ordinance, and each and every individual section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

SECTION 6: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: 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 4th day of April, 2023, by the following vote:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Barber, Garcia, Haffa, Smith, Williamson |
| NOES: | 0 | COUNCILMEMBERS: | None |
| ABSENT: | 0 | COUNCILMEMBERS: | None |
| ABSTAIN: | 0 | COUNCILMEMBERS: | None |


APPROVED:

ATTEST:

DocuSigned by:

4B38B5C4EE3E4F5...

 Mayor of said City

DocuSigned by:

ED8459A4F62C4AA...

 City Clerk thereof