



## Planning Commission Agenda

Special Meeting of March 25, 2019 – 6:00 p.m.

Council Chambers, Civic Center

1243 National City Boulevard

National City, CA 91950



The Planning Commission requests that all cellphones, pagers, and/or smart devices be turned off during the meeting.

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Welcome to the Planning Commission meeting. The National City Planning Commission conducts its meeting in the interest of community benefit. Your participation is helpful. These proceedings are video recorded.

### **Roll Call**

### **Pledge of Allegiance by Commissioner Garcia**

### **Approval of Minutes**

1. Approval of Minutes from the Meeting of March 4, 2019

### **Approval of Agenda**

2. Approval of the Agenda for the Special Meeting on March 25, 2019

### **ORAL COMMUNICATIONS (3 MINUTE TIME LIMIT).**

NOTE: Under State law, items requiring Commission action must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature.

### **PRESENTATIONS**

### **CONTINUED PUBLIC HEARINGS**

### **PUBLIC HEARINGS**

3. Resolution taking action on a Code Amendment Amending Section 18.30.220 (Telecommunications Facilities) of the National City Municipal Code

### **OTHER BUSINESS**

### **STAFF REPORTS**

Senior Assistant City Attorney

Deputy City Manager

Acting Planning Director

Principal Planner

Commissioners

Chairperson

### **ADJOURNMENT**

Adjournment to the next regularly scheduled meeting on April 8, 2019.



## **Planning Commission Minutes**

Planning Commission  
Meeting of March 4, 2019  
Council Chambers, Civic Center  
1243 National City Boulevard  
National City, CA 91950

These minutes have been abbreviated. Video recordings of the full proceedings are on file and available to the public.

### **Agenda Items**

The meeting was called to order by Chair Sendt at 6:02 p.m.

### **Roll Call**

Commissioners Present: Flores, Sendt, Yamane, Dela Paz

Commissioners Absent: Garcia, Baca

Staff Also Present: Senior Assistant City Attorney Nicole Pedone, Acting Planning Director Ray Pe, Principal Planner Martin Reeder, Acting Assistant Planner Chris Stanley

### **Pledge of Allegiance Presented by Chair Sendt**

1. Approval of Minutes from the Meeting of February 4, 2019.

Motion by Yamane, second by Flores to approve the Minutes for the Meeting of February 4, 2019.

### **Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca

2. Approval of the Agenda for the Meeting of March 4, 2019.

Motion by Yamane, second by Flores to approve the Agenda for the Meeting of March 4, 2019.

**Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca

**ORAL COMMUNICATION:** None.

**PRESENTATIONS:** None.

**CONTINUED PUBLIC HEARINGS:**

3. Resolution taking action on a Conditional Use Permit for the Modification of an Existing Wireless Communications Facility on a Sign located at 1900 East Plaza Boulevard (Family House of Pancakes) (Case File No. 2018-28 CUP)

Presented by Acting Assistant Planner Chris Stanley.

Applicant, Chris Ward on behalf of T-mobile, has read, understands, and accepts the conditions of the Conditional Use Permit.

Commissioner Dela Paz disclosed that she no longer had a financial interest in the project's area and therefore did not have a conflict.

Motion by Yamane, second by Dela Paz to close the public hearing and approve a Conditional Use Permit for the Modification of an Existing Wireless Communications Facility on a Sign located at 1900 East Plaza Boulevard (Family House of Pancakes) (Case File No. 2018-28 CUP)

**Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca



**PUBLIC HEARINGS:**

4. Resolution taking action on a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Salud) located at 2333 Highland Avenue (Case File No. 2018-16 CUP)

Presented by Acting Assistant Planner Chris Stanley.

On behalf of the applicant, consultant Marco Cortez, has read, understands, and accepts the conditions of the Conditional Use Permit.

The applicant requested that the hour of closing be extended from 10:00 p.m. to 11:00 p.m. on Friday and Saturday.

Motion by Yamane, second by Flores to close the public hearing and approve a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Salud) located at 2333 Highland Avenue (Case File No. 2018-16 CUP) with the caveat that the hour of closing be extended from 10:00 p.m. to 11:00 p.m. on Friday and Saturday.

**Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca

5. Resolution taking action on a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Birriera Negro Durazo) located at 1604 East 18<sup>th</sup> Street (Case File No. 2018-17 CUP)

Presented by Acting Assistant Planner Chris Stanley.

The applicant requested that the hour of closing be extended from 8:00 a.m. to 11:00 p.m. on Friday and Saturday.

Consultant to the applicant Marco Cortez, has read, understands, and accepts the conditions of the Conditional Use Permit.

Public Speaker: Azhocal McManus, representing the National City Chamber of Commerce, spoke in support of the item.

Business owner Carlos Gabriel answered questions posed by the Commissioners.

Motion by Yamane, second by Sendt to close the public hearing and approve a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Birriera Negro Durazo) located at 1604 East 18<sup>th</sup> Street (Case File No. 2018-17 CUP) with the caveat that the hours of operation be extended to 8:00 a.m. to 11:00 p.m. on Friday and Saturday.

**Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca

**OTHER BUSINESS:**

6. Election of Replacement Vice Chair for 2019

Motion by Sendt, second by Yamane to elect Commissioner Flores as the Vice Chair for 2019.

**Motion carried by the following vote:**

**Ayes:** Flores, Sendt, Yamane, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** Garcia, Baca

**STAFF REPORTS:**

**Senior Assistant City Attorney:** None.

**Brad Raulston, Deputy City Manager:** Absent.

**Acting Planning Director:** None.

**Principal Planner:** None.

**COMMISSIONER REPORTS:**

Chair Sendt advised that he would be absent at the next meeting occurring on March 18, 2019.

There were no other reports.

**ADJOURNMENT** by Chair Sendt at 6:53 p.m. to the meeting of March 18, 2019.

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CHAIRPERSON

The foregoing minutes were approved at the Special Meeting of March 25, 2019.



Item no. **3**  
March 25, 2019

CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

### **PLANNING COMMISSION STAFF REPORT**

TITLE: PUBLIC HEARING – CODE AMENDMENT AMENDING  
SECTION 18.30.220 (TELECOMMUNICATIONS  
FACILITIES) OF THE NATIONAL CITY MUNICIPAL CODE.

Case File No.: 2018-02 A

Staff report by: Martin Reeder, AICP – Principal Planner  
Roberto Contreras – Deputy City Attorney

Project location: Citywide

Applicant: City-initiated Land Use Amendment

Environmental review: Not a project per CEQA

Staff recommendation: Approve as amended

### **BACKGROUND**

#### **Staff Recommendation**

Staff recommends that the Planning Commission recommend approval of the amendment to the City Council.

#### **History**

The City Council initiated an amendment on January 16, 2018 related to wireless communication facilities located in the City of National City's ("City") right-of-way. The amendment intended to exempt City-licensed facilities from the Conditional Use Permit (CUP) process and substitute a "license agreement" process where design and placement standards would be regulated. The Planning Commission held a public hearing on February 5, 2018 and recommended approval of the amendment to the City



Council by a vote of five to two. At the following City Council meeting, based on public concerns, the Council voted unanimously to hold a community meeting at a later date to address potential concerns and process.

In the interim, the Federal Communications Commission (FCC) adopted new preemptive regulations applicable to all small wireless facilities whether located on a City-owned pole or not. As a result, staff prepared proposed regulations that would be applicable to all small wireless facilities in the public rights-of-way. The FCC's new regulations will become fully effective on April 15, 2019. A town hall meeting on small facilities was held on March 12, 2019 where the proposed amendment and proposed regulations were considered by community and industry stakeholders.

#### Overview

Section 18.30.220 ("Telecommunications facilities") of the City's Municipal Code (NCMC) regulates the placement and use of wireless telecommunications facilities and antenna installation within the City. This section requires a CUP for all such facilities.

Several wireless providers have recently expressed interest in locating "small wireless facilities" on City-owned utility poles. In order to preserve the City's maximum regulatory authority, the City Manager is seeking authorization and direction from the City Council to negotiate the terms of a license agreement to locate small wireless facilities on City-owned utility poles with wireless providers.

Changes in federal and state law have significantly affected the City's authority to regulate such wireless facilities. These changes include stricter timeframes and limitations on application reviews, new regulatory classifications for collocations and modifications to existing facilities, and even automatic approvals under certain circumstances.

Rulemaking proceedings at the FCC on September 27, 2018 largely reduced cities' authority to regulate small cells. For example, the September 27th Order capped administrative fees cities could charge at \$270 per installation, per year; reduced discretion regarding aesthetic and design requirements; and, created new, shorter deadlines for approving applications to deploy small cells in the right of way.

These new FCC regulations are applicable to all small wireless facilities whether such facilities are located on a City-owned pole or not. As a result, staff recommends that the City adopt new regulations for all small wireless facilities in the public rights-of-way in addition to the recommended authorization to enter license agreements for attachments to City-owned poles.

Staff supports a more streamlined process for small wireless facilities that does not require a CUP. The shorter timeframes for local review mandated by the FCC effectively preclude the City from completing the CUP process without risking exposure to litigation for failure to act in a timely manner. As a substitute to the formal CUP process, the amendment will require an administrative approval and will include standard design and placement guidelines, application requirements and operation and maintenance conditions. These new regulations will also be more easily and quickly amended as the applicable laws and technology continue to change. Likewise, the new regulations can be quickly repealed if pending challenges to the FCC's rules are successful. Streamlining the process for facilities on City-owned utility poles would preserve the City's discretionary authority to the maximum extent permitted by law and allow the City to respond more quickly to future state or federal preemption.

#### Proposed Amendment

In order to exempt small wireless facilities from the current CUP process, but still allow for design and placement review, staff suggests adding Section 18.30.220.(H) to the National City Municipal Code to read as follows:

- H. Notwithstanding any other provision of this section, all "small wireless facilities" as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, shall be subject to permits and other requirements as specified in City Council Policy No. [**to be determined**], which is adopted and may be amended or repealed by a City Council resolution. If City Council Policy No. [**to be determined**] is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this section.

This change would allow for small wireless facilities and other infrastructure deployments to be located in the City right-of-way through an administrative permit.

Small wireless facilities located on City-owned infrastructure would still require a license agreement.

### Findings

There are generally two findings for approval of a Code Amendment, one related to General Plan consistency and one related to compliance with the California Environmental Quality Act (CEQA).

- The requested amendment is consistent with the General Plan, as Policy E-3.3 encourages access to wireless internet connections, computers, and other forms of communication technology. The small wireless facilities would provide the same internet/cellular data and standard cellphone service capability as major facilities.
- This amendment is not considered to be a project under CEQA as each small wireless facility would be considered a ministerial application, which is exempt from the application of CEQA per Section 21080 of the Public Resources Code, or be individually reviewed under the license agreement to determine if additional environmental review would be needed.

Two additional findings are included as follows:

- Given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the Planning Commission finds that the proposed Amendment allows for greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable.
- Recent changes in federal law effectively limit local governments from exercising full zoning controls over small wireless facilities and generally require that the regulations for small wireless facilities be no more burdensome than those applied to other infrastructure deployments. The proposed Amendment would comply with the recent changes in federal law by providing reasonable aesthetic regulations and a review and approval process for such facilities within the City



that is consistent with the new, shorter timeframes to act on a permit application. The proposed Amendment would also instruct City officials to use the standards in the proposed Amendment as guidelines for other infrastructure deployments to the extent not specifically prohibited by applicable law.

#### Summary

An amendment to the City's existing regulations for wireless facilities is necessary for compliance with new FCC rules. Staff believes that the proposed amendments to regulate small wireless facilities in the City right-of-way would preserve the City's discretionary authority to the maximum extent permitted by law and allow the City to respond more quickly to future state or federal preemption. Accordingly, staff recommends that the proposed amendment to the Land Use Code be approved in order to achieve this goal.

#### OPTIONS

1. Recommend approval of the amendment to Section 18.30.220 based on the attached findings or findings to be determined by the Planning Commission; or
2. Recommend denial of the amendment to Section 18.30.220 based on findings to be determined by the Planning Commission; or,
3. Continue the item to a specific date.

#### ATTACHMENTS

1. Findings for Approval
2. Draft City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way
3. Draft Ordinance Amending NCMC Section 18.30.220
4. Resolution



RAY PE  
Acting Planning Director



## **RECOMMENDED FINDINGS FOR APPROVAL**

1. Given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the Planning Commission finds that the proposed Amendment allows for greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable.
2. Recent changes in federal law effectively limit local governments from exercising full zoning controls over small wireless facilities and generally require that the regulations for small wireless facilities be no more burdensome than those applied to other infrastructure deployments. The proposed Amendment would comply with the recent changes in federal law by providing reasonable aesthetic regulations and a review and approval process for such facilities within the City that is consistent with the new, shorter timeframes to act on a permit application. The proposed Amendment would also instruct City officials to use the standards in the proposed Amendment as guidelines for other infrastructure deployments to the extent not specifically prohibited by applicable law.
3. The requested amendment is consistent with the General Plan, as Policy E-3.3 encourages access to wireless internet connections, computers and other forms of communication technology. The small wireless facilities would provide the same or more advanced internet/cellular data and standard cellphone service capability as major facilities.
4. Pursuant to California Public Resources Code § 21065 and the California Environmental Quality Act ("CEQA") Guidelines § 15378, the City Council finds that the proposed Amendment would not be a "project" because its adoption would not be an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed Amendment would not be subject to CEQA. Even if the proposed Amendment qualified as a "project" subject to CEQA, the City Council should find that, pursuant to CEQA Guidelines § 15061(b)(3), there would be no possibility that this project would have a significant impact on the physical environment. The proposed Amendment merely amends the § 18.30.220 to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. The proposed Amendment would not directly or indirectly authorize or approve any

actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment, and/or change to an existing small wireless facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council should find that the proposed Amendment would be exempt from CEQA under the general rule.

<b>CITY OF NATIONAL CITY</b>	<b>POLICY NO. <span style="background-color: yellow;">      </span></b>
adopted: [ <i>insert effective date</i> ]	
<b>City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way</b>	

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## SECTION 1. BACKGROUND AND INTRODUCTION

In 1996, Congress adopted the Telecommunications Act to balance the national interest in advanced communications services and infrastructure with legitimate local government authority to enforce zoning and other regulations to manage infrastructure deployments on private property and in the public rights-of-way. Under section 704, which applies to personal wireless service facilities (*i.e.*, cell sites), local governments retain all their traditional zoning authority subject to specifically enumerated limitations.<sup>1</sup> Section 253 preempts local regulations that prohibit or effectively prohibit telecommunication services (*i.e.*, common carrier services) except competitively neutral and nondiscriminatory regulations to manage the public rights-of-way and require fair and reasonable compensation.

Communication technologies have significantly changed since 1996. Whereas cell sites were traditionally deployed on tall towers and rooftops over low frequency bands that travel long distances, cell sites are increasingly installed on streetlights and utility infrastructure on new frequency bands that travel shorter distances. According to the Federal Communications Commission ("FCC") and the wireless industry, these so-called "small wireless facilities" or "small cells" are essential to the next technological evolution. The industry currently estimates that each national carrier will need to deploy between 30 and 60 small cells, connected by approximately 8 miles of fiber optic cable, per square mile.

On September 27, 2018, the FCC adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. In general, the *Small Cell Order*: (1) restricts the fees and other compensation state and local governments may receive from applicants; (2) requires all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandates that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) creates new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the Telecommunications Act.

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<sup>1</sup> Local zoning regulations cannot prohibit or effectively prohibit personal wireless services, unreasonably discriminate among functionally equivalent services or regulate based on environmental impacts from radiofrequency ("RF") emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.



## SECTION 2. PURPOSE AND INTENT

- (a) The City of National City intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- (c) This policy is intended to establish regulations, standards and guidelines for all infrastructure deployments unless specifically prohibited by applicable law. The City Council recognizes that different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. Although such deployments may be exempt from the "ROW use permit" established in this policy, the City Council intends that the City official or department that administers such deployment shall apply the same regulations, standards and guidelines to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. The City Council also recognizes that different infrastructure deployments may have different impacts on the public rights-of-way that require different



regulations, standards or guidelines to protect public health, safety and welfare. However, to the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City Council intends that one set be no more burdensome than the other when viewed under the totality of the circumstances.

- (d) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

### SECTION 3. DEFINITIONS

The definitions in this [section 3](#) be applicable to the terms, phrases and words this policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 151 or, if not defined therein, will have the meaning assigned to them in Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this [section 3](#) conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

**"accessory equipment"** means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

**"antenna"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

**"arterial road"** means a road designed to feed through-traffic to freeways, multi-lane highways and interstates, provide access to adjacent land uses – mostly at intersections – and feature traffic control measures. The term "arterial road" as used in this policy is defined in the [Circulation Element of the National City General Plan](#).

**"batched application"** means more than one application submitted at the same time.

**“collector road”** means a road designed to provide access to adjacent land uses and feed local traffic to arterials. The term “collector road” as used in this policy includes collectors and residential collectors as defined in the [Circulation Element of the National City General Plan](#).

**“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

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

**“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

**“Director”** means the Public Works Director or the Director’s designee.

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

**“FCC Shot Clock”** means the presumptively reasonable time frame, accounting for any tolling or extension, within which the City generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

**“local road”** means a road with low speeds and high accessibility to adjacent land uses that generally feed into collector roads and are not intended for through traffic. The term “local road” as used in this policy is defined in the [Circulation Element of the National City General Plan](#).

**“ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City’s departments.

**“OTARD”** means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

**“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

**“personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.



**"persons entitled to notice"** means the record owners and legal occupants of all properties within 300 feet from the proposed project site and any other person who requests notice consistent with National City Municipal Code § 18.15.050.C.2. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

**"RF"** means radio frequency or electromagnetic waves.

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

**"shot clock days"** means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term "shot clock days" does not include any calendar days on which the FCC Shot Clock is tolled. As an illustration and not a limitation, if an applicant applies on February 1, receives a valid incomplete notice on February 5 and then resubmits on February 20, only four "shot clock days" have elapsed because the time between the incomplete notice and resubmittal are not counted.

**"small wireless facility"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

**"support structure"** means a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

**"technically infeasible"** means a circumstance in which compliance with a specific requirement within this policy is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

**"underground district"** means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

## **SECTION 4. APPLICABILITY**

- (a) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in this policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City's jurisdictional and territorial boundaries.



- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to [Municipal Code chapter 13.12](#), involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the departments and/or officials responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this policy unless specifically prohibited by applicable law.

## **SECTION 5. REQUIRED PERMITS AND APPROVALS**

- (a) **ROW Use Permit.** A "ROW use permit", subject to the Director's review and approval in accordance with this policy, shall be required for all small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way.
- (b) **Exemptions.** Notwithstanding anything in this policy to the contrary, a ROW use permit shall not be required for:
- (1) wireless facilities or other infrastructure deployments owned and operated by the City for its use;
  - (2) OTARD facilities;
  - (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be subject to the current FCC rules and regulations "eligible facilities requests" as defined by FCC and as may be amended or superseded; or
  - (4) wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.
- (c) **Other Permits and Approvals.** In addition to a ROW use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid ROW use permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such ROW use permit may be denied without prejudice. Any ROW use permit granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the ROW use permit requirement



under **section 5(b)** does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

## **SECTION 6. APPLICATION AND REVIEW PROCEDURES**

- (a) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all ROW use permit applications for small wireless facilities must include the following information and materials:
- (1) **Application Form.** The applicant shall submit a complete, duly executed ROW use permit application on the then-current form prepared by the Director.
  - (2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established by City Council resolution. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.
  - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 500 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
  - (4) **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed or registered engineer.



The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a ROW use permit as provided in [section 8\(b\)](#).
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, both individually and cumulatively with all other emitters in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each



such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

- (8) **Public Notices.** The applicant shall include with the application a list that identifies all persons entitled to notice (as defined in this policy) together with three preaddressed envelopes with correct postage for each person entitled to notice.
- (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (10) **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City's Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's Pole License Agreement shall be an independently sufficient basis to deny the application.
- (11) **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, whether in whole or in part, the applicant must submit:  
(i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property. For any small wireless facility proposed to be installed on a support structure in the public right-of-way, the applicant must submit a written authorization from the support structure owner(s).
- (12) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must 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. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.



- (b) **Voluntary Presubmittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a presubmittal conference with the Director and other City staff. This voluntary, presubmittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Presubmittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. The Director will use reasonable efforts to provide the applicant with an appointment within approximately five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff time and services rendered in the presubmittal conference.
- (c) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- (d) **Incomplete Applications Deemed Withdrawn.** Any application governed under this policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this subsection (d), a "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.



- (e) **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. The Director further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

## **SECTION 7. PUBLIC NOTICES**

- (a) **Application Submittal Notice.** Within approximately 10 calendar days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all persons entitled to notice. The notice must contain: (1) a general project description, which must include the nature of the project, the project location and an accurate diagram or photo simulation; (2) the City's file number for the application; (3) the applicant's identification and contact information as provided on the application submitted to the City; (4) contact information for the Director and a deadline for interested parties to submit written comments; (5) a statement that the Director will act on the application without a public hearing but that any interested person or entity may appeal the Director's decision directly to the City Council; and (6) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures.
- (b) **Application Decision Notice.** Within five calendar days after the Director acts on a ROW use permit application, the Director shall provide written notice to the applicant and all persons entitled to notice. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

## **SECTION 8. DECISIONS**

- (a) **Initial Administrative Decision.** Not less than 10 calendar days after the public notice required in [section 7\(a\)](#) is sent, and not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed ROW use permit application without a public hearing.

- (b) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW use permit when the Director finds:
- (1) the proposed project complies with all applicable design standards in this policy;
  - (2) the proposed project would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
  - (3) the proposed project would not be located on a prohibited support structure identified in this policy;
  - (4) the proposed project would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
  - (5) if the proposed project involves a wireless facility, the proposed project fits within the definition for a "small wireless facility" as defined by the FCC;
  - (6) if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
  - (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any ROW use permit application as may be necessary or appropriate to ensure compliance with this policy.
- (d) **Appeals.** Any interested person or entity may appeal the decision by the Director to the City Council; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. An appeal notice must be filed within seven calendar days after the date on the Director's decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. The City Council shall hear appeals *de novo* and issue the applicant a written decision within five



calendar days after the appeal hearing. If the City Council denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

## SECTION 9. CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be authorized in subsection (b), all ROW use permits issued under this policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
  - (2) **Permit Renewal.** Not more than one year before this ROW use permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this ROW use permit and all applicable provisions in the Municipal Code and this policy that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Municipal Code, this policy or other applicable law. Upon renewal, this ROW use permit will automatically expire 10 years and one day from its issuance.
  - (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
  - (4) **Build-Out Period.** This ROW use permit will automatically expire 12 months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure



deployment and its use. If the permittee cannot obtain all other permits and approvals before build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this ROW use permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this ROW use permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Municipal Code, this policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Municipal Code, this policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director



may issue a stop work order for any activities that violates this condition in whole or in part.

- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this ROW use permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this ROW use permit or the small wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly



acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this ROW use permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this ROW use permit.

- (11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.
- (12) **Permit Revocation.** Any permit granted under this policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall



provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- (13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the ROW use permit application, ROW use permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the ROW use permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- (14) **Abandoned Facilities.** The small wireless facility or other infrastructure deployment authorized under this ROW use permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and



pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- (16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- (17) **Future Undergrounding Programs.** Notwithstanding any term remaining on any ROW use permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (18) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the



removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

- (19) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this ROW use permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.
- (20) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the ROW use permit or the small wireless facility or other infrastructure approved under the ROW use permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any ROW use permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in [subsection \(a\)](#) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Municipal Code, this policy, generally applicable health and safety requirements and/or any

other applicable laws. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to small wireless facilities are no more burdensome than those applied to other infrastructure deployments.

## SECTION 10. LOCATION STANDARDS

- (a) **Location Preferences.** To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) locations within commercial or industrial districts on or along arterial streets;
  - (2) locations within commercial or industrial districts on or along collector streets;
  - (3) locations within commercial or industrial districts on or along local streets;
  - (4) locations within residential districts on or along arterial streets;
  - (5) locations within residential districts on or along collector streets;
  - (6) locations within residential districts on or along local streets;
  - (7) locations within open space districts, including without limitation Morgan Square, on or along any street;
  - (8) locations along Brick Row;
  - (9) any location within 500 feet from an existing small wireless facility;
  - (10) any location within 500 feet from any structure approved for a residential use;
- (b) **Prohibited Support Structures.** Except when authorized as a pre-approved design pursuant to this policy, small cells shall not be permitted on the following support structures:
- (1) decorative poles;



- (2) traffic signal poles, cabinets or related structures;
  - (3) new, nonreplacement wood poles;
  - (4) any utility pole scheduled for removal or relocation within 18 months from the time the Director acts on the small cell application;
- (c) **Encroachments Over Private Property.** No small wireless facilities, other infrastructure deployments, accessory equipment or other improvements may encroach onto or over any private or other property ~~outside~~ the public rights-of-way without the property owner's express written consent.
- (d) **No Interference with Other Uses.** Small wireless facilities and other infrastructure deployments and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.
- (e) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all applicable standards and specifications by the City Engineer.
- (f) **Additional Placement Requirements.** In addition to all other requirements in this policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:
- (1) be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
  - (2) not be placed directly in front of any door or window;
  - (3) not be placed within any sight distance triangles at any intersections;
  - (4) be placed at least      feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;

- (5) be placed at least    feet away from any driveways for police stations, fire stations or other emergency responder facilities.

## SECTION 11. DESIGN STANDARDS

- (a) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in Title 12 of the Municipal Code, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (c) **Lights.** All lights and light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the City Engineer. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
- (d) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (e) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.



- (f) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (g) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
- (h) **Antennas.** The provisions in this subsection (h) are generally applicable to all antennas.
- (1) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed two times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
- (2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
- (3) **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
- (4) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 24 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- (i) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (A) nine cubic feet in residential areas or (B) seventeen cubic

feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.

(j) **Undergrounded Accessory Equipment.**

- (1) **Where Required.** Accessory equipment (other than any electric meter (where permitted) emergency disconnect switch) shall be placed underground when proposed in any (A) underground district or (B) any location where the Director finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
- (2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk.

(k) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

- (1) **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.
- (2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least eight feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than eight feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
- (3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project:  
(i) more than 24 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for



compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).

- (4) **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.
- (l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
  - (1) **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
  - (2) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed 4.5 feet in height or 4.5 feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
- (m) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
  - (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines. No new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.



- (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
- (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (4) **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal.
- (5) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

## **SECTION 12. PREAPPROVED DESIGNS**

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design exceeds the design standards in this policy. The Director shall post a public notice posted at the Public Works Department offices, with the City Clerk and in a newspaper of general circulation within the City. The notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any districts and contain a reference to the appeal procedure. Unless appealed pursuant to [code], the



preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.

- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted at Public Works Department offices. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Review Process.** In nonresidential districts, applications for a preapproved design shall not be subject to the notice requirements in [section 7\(a\)](#) or any potential appeals under [section 8\(d\)](#). In residential districts, applications for a preapproved design shall remain subject to the notice requirements in [section 7](#) and any potential appeals under [section 8\(d\)](#).
- (e) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in [sections 7\(b\)\(1\) and 7\(b\)\(5\)](#) are satisfied and shall evaluate the application for compliance with the findings for approval in [sections 7\(b\)\(2\), 7\(b\)\(3\), 7\(b\)\(4\), 7\(b\)\(6\) and 7\(b\)\(7\)](#).
- (f) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

ORDINANCE NO.  

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
NATIONAL CITY, CALIFORNIA, AMENDING SECTION  
18.30.220 OF THE NATIONAL CITY MUNICIPAL CODE  
FOR THE REGULATION OF SMALL WIRELESS  
FACILITIES AND OTHER INFRASTRUCTURE  
DEPLOYMENTS.**

**RECITALS**

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws.

**WHEREAS**, the City currently regulates all “wireless telecommunication facilities” under Municipal Code § 18.30.220, which requires a use permit and design review for all applications. The provisions in § 18.30.220 are generally applicable do not distinguish between facilities on private property and those within the public rights-of-way.

**WHEREAS**, since the City Council last amended its regulations for wireless facilities, significant changes in federal laws that affect local authority over personal wireless service facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:

- On August 2, 2018, the Federal Communications Commission (“**FCC**”) adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “**August Order**”), that formally prohibited express and *de facto* moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the “**September Order**”), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing “shot clock” regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for



the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition.

**WHEREAS**, in addition to the changes described above, local authority may be further impacted by other pending legislative, judicial and regulatory proceedings, including but not limited to:

- The “STREAMLINE Small Cell Deployment Act” (S. 3157) proposed by Senator John Thune that, among other things, would apply specifically to “small” WCFs and require local governments to review applications based on objective standards, shorten the shot clock timeframes, require all local undertakings to occur within the shot clock timeframes and provide a “deemed granted” remedy for failure to act within the applicable shot clock; and
- Further orders and/or declaratory rulings by the FCC from the same rulemaking proceeding as the August Order and September Order; and
- Multiple petitions for reconsideration and judicial review filed by state and local governments against the August Order and September Order, which could cause the rules in either order to change or be invalidated.

**WHEREAS**, given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the City Council desires to amend § 18.30.220 to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the City’s traditional authority to the maximum extent practicable (the “Amendment”).

**WHEREAS**, on [date], the Planning Commission held a duly noticed public hearing on the Amendment, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record, and recommended that the City Council adopt the Amendment;

**WHEREAS**, on [date], the City Council held a duly noticed public hearing on the proposed Amendment, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY HEREBY FINDS, DETERMINES AND ORDAINS AS FOLLOWS:**

## **SECTION 1. FINDINGS.**

The City Council finds that:

- A. The facts set forth in the recitals are true and correct and incorporated herein by this reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.
- B. The Amendment is consistent with the General Plan, Municipal Code and applicable federal and state law.
- C. The Amendment will not be detrimental to the public interest, health, safety, convenience or welfare.

## **SECTION 2. ENVIRONMENTAL REVIEW.**

Pursuant to California Public Resources Code § 21065 and the California Environmental Quality Act (“**CEQA**”) Guidelines § 15378, the City Council finds that this Ordinance is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance qualified as a “project” subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends § 18.30.220 to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment, and/or change to an existing small wireless facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA under the general rule.

## **SECTION 3. AMENDMENT TO SECTION 18.30.220 OF THE NATIONAL CITY ZONING CODE.**

Section 18.30.220.H is added to the National City Municipal Code and shall read as follows:

- H. Notwithstanding any other provision of this section, all “small wireless facilities” as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, shall be subject to permits and other requirements as specified in City Council Policy No. [REDACTED], which is adopted and may be amended or repealed by a City



Council resolution. If City Council Policy No. [REDACTED] is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this section.

#### **SECTION 4. CONFLICTS WITH PRIOR ORDINANCES.**

If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date, the provisions in this Ordinance will control.

#### **SECTION 5. SEVERABILITY.**

If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this Ordinance, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Ordinance, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

#### **SECTION 6. EFFECTIVE DATE.**

This Ordinance shall become effective 30 days after its passage and adoption.

#### **SECTION 7. PUBLICATION.**

No later than 15 days after its adoption, this Ordinance (or a summary) together with the names of each City Council members who voted for or against this Ordinance shall be published in the manner required by law.

\* \* \*

**FIRST INTRODUCED** by the City Council at a regular meeting on [REDACTED], 2019.

**PASSED and ADOPTED** by the City Council at a regular meeting on [REDACTED], 2019, by the following vote:

Ayes: [insert]

Noes: [insert]

Absent: [insert]

Abstain: [insert]

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Mayor  
Alejandra Sotelo-Solis

**APPROVED AS TO FORM:**

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City Attorney  
Angil Morris-Jones

**ATTEST:**

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City Clerk  
Mike Dalla



STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF NATIONAL CITY

I, Mike Dalla, City Clerk of the City of National City, hereby certify that the foregoing Ordinance No. [insert] was passed and adopted by the City Council of the City of National City at a regular meeting held on [date].

## PLANNING COMMISSION RESOLUTION NO. 2019-06

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NATIONAL CITY RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, AMENDING SECTION 18.30.220 (TELECOMMUNICATIONS FACILITIES) OF THE NATIONAL CITY MUNICIPAL CODE FOR THE REGULATION OF SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS.

#### RECITALS

**WHEREAS**, the City currently regulates all “wireless telecommunication facilities” under Municipal Code § 18.30.220, which requires a use permit and design review for all applications. The provisions in § 18.30.220 are generally applicable and do not distinguish between facilities on private property and those within the public rights-of-way.

**WHEREAS**, since the City last amended its regulations for wireless facilities in 2012, significant changes in federal laws that affect local authority over personal wireless service facilities and other related infrastructure deployments have occurred, which includes, without limitation, new regulations by the Federal Communications Commission (“FCC”) that (1) prohibit temporary moratoria on telecommunications infrastructure deployment; (2) create a new regulatory classification for small wireless facilities; (3) alter existing “shot clock” regulations to require local public agencies to do more in less time; (4) establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit; (5) and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. These new regulations are partially in effect and, on April 15, 2019, will be fully effective.

**WHEREAS**, City staff, with assistance from outside counsel specialized in telecommunications infrastructure regulations, prepared a proposed amendment to § 18.30.220 that would allow the City to regulate small wireless facilities and other infrastructure deployments through policies adopted by resolution rather than in a codified ordinance, together with proposed such proposed policies (collectively, the “Amendment”). The proposed Amendment is attached to this Resolution as **Exhibit A**.

**WHEREAS**, on March 25, 2019, at a duly noticed public hearing, the Planning Commission considered a proposed amendment to § 18.30.220 together with proposed regulations for compliance with changes in the law, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.



**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of National City that:

- A. The Planning Commission recommends that the City Council adopt the proposed Amendment based on the following findings:
1. Given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the Planning Commission finds that the proposed Amendment allows for greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable.
  2. Recent changes in federal law effectively limit local governments from exercising full zoning controls over small wireless facilities and generally require that the regulations for small wireless facilities be no more burdensome than those applied to other infrastructure deployments. The proposed Amendment would comply with the recent changes in federal law by providing reasonable aesthetic regulations and a review and approval process for such facilities within the City that is consistent with the new, shorter timeframes to act on a permit application. The proposed Amendment would also instruct City officials to use the standards in the proposed Amendment as guidelines for other infrastructure deployments to the extent not specifically prohibited by applicable law.
  3. The requested amendment is consistent with the General Plan, as Policy E-3.3 encourages access to wireless internet connections, computers and other forms of communication technology. The small wireless facilities would provide the same or more advanced internet/cellular data and standard cellphone service capability as major facilities.
  4. Pursuant to California Public Resources Code § 21065 and the California Environmental Quality Act ("CEQA") Guidelines § 15378, the City Council finds that the proposed Amendment would not be a "project" because its adoption would not be an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed Amendment would not be subject to CEQA. Even if the proposed Amendment qualified as a "project" subject to CEQA, the City Council should find that, pursuant to CEQA Guidelines § 15061(b)(3), there would be no possibility that this project would have a significant impact on the physical environment. The proposed Amendment merely amends the § 18.30.220 to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. The proposed Amendment would not directly

or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment, and/or change to an existing small wireless facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council should find that the proposed Amendment would be exempt from CEQA under the general rule.

\* \* \*

**PASSED and ADOPTED** by the Planning Commission at a Special Meeting on March 25, 2019, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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CHAIRPERSON  
William Sendt



**EXHIBIT A**

**PROPOSED AMENDMENT**

(appears behind this coversheet)

Proposed amendment:

**18.30.220 - Telecommunications facilities.**

- H. Notwithstanding any other provision of this section, all “small wireless facilities” as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, shall be subject to permits and other requirements as specified in City Council Policy No. [***to be determined***], which is adopted and may be amended or repealed by a City Council resolution. If City Council Policy No. [***to be determined***] is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this section.