Part 15. Planning Department Policies

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.1
ENFORCEMENT OF WATER EFFICIENT LANDSCAPE ORDINANCE

Adoption Date:	12/12/2011	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

15.1.1 BACKGROUND

In 1992, the California State Legislature passed the Water Conservation in Landscaping Act, requiring all local agencies to adopt a Water Efficient Landscape Ordinance. In 2006, the legislature adopted the Water Conservation Landscaping Act (AB 1881) in response to a stakeholder work group's findings for further improving State water efficiency requirements. AB 1881 ordered the Department of Water Resources to draft an updated Model Water Efficient Landscape Ordinance (Model WELO) All local agencies were required to adopt the Model Ordinance or an equivalent by January 1, 2010.

Discussions between the City of Belvedere's City Attorney and Marin Municipal Water District's (MMWD) Attorney have led to the mutual decision that the State's Model Ordinance does not have precedence over regulations adopted by a local public water system or water purveyor that are as strict or stricter than the conservation measures in the State's Model Ordinance. In December 2009, the Marin Municipal Water District adopted its own water efficient landscape ordinance (Ordinance No. 414, part) requiring that landscaping for certain projects be designed, installed and maintained based on a specific water allowance calculated for the individual site. In January 2011, the MMWD Board of Directors amended its WELO in its Ordinance No. 421. MMWD's WELO is codified in the MMWD Code under Subsection (5), "Water Efficient Landscaping," of Section 13.02.021, "Water Conservation: Normal Year Water Conservation," of Chapter 13, "Water Conservation and Dry Year Water Use Reduction Program," of Title 13, "Water Service Conditions and Water Conservation Measures."

15.1.2 COMMENTS

The following sections are intended to provide Staff with a clear understanding of their role in educating the public and ensuring compliance with AB 1881 and MMWD Code Subsection 13.02.021(5).

15.1.3 APPLICABILITY AND DEFINITIONS

MMWD's WELO allows for three different thresholds of landscape review depending upon who

is providing the plans and installing the project. The following three paragraphs provide clarification of the different thresholds.

Developer or contractor installed: Developer installed projects refer to a type of private development project where the developer will install the landscaping at single-family or multi-family homes. This is often seen in tract subdivisions and master planned communities, condominium complexes, and speculative real estate. Developer installed, single-family and multi-family projects with a landscape area equal to or greater than 1,000 square feet that requires a building or landscaping permit, plan check or design review are subject to WELO review. Contractor installed refers to any landscaping project which a property owner does not physically manage or supervise. "Contractor" refers to the common meaning of the term used in construction and landscaping.

Homeowner-provided: Homeowner-provided development projects occur when the homeowner develops and guides the project themselves. The homeowner may be receiving the help of a gardener or a licensed contractor hired to perform the work, but this designation does not relate to projects exclusively directed by a professional. With homeowner-provided projects, the homeowner would be taking responsibility for the project, not a licensed contractor.

Private development and public agency projects: This threshold refers to non-residential development and public agency/public works projects. Projects in this category that are equal to or greater than 1,000 square feet of landscape area are subject to WELO review.

It will be at the discretion of the contact person in MMWD's Water Conservation Department to determine which projects are "developer or contractor installed" and "homeowner-installed." City Staff has been advised by MMWD that any homeowner hiring a contractor or landscape/design professional to facilitate the project will fall under the category of "developer or contractor installed". Only homeowners working on, installing and taking responsibility for their own projects would classify as "homeowner-provided."

15.1.4 IMPLEMENTATION

Staff shall require that all Design Review applications involving landscaping provide a calculation of "landscape area" proposed for new work. Landscape area shall be defined as:

A. Landscaped Area (LA): all planting areas, turf areas, and water features in a landscape design plan. The landscape area does not include footprints of buildings or structures, roofs, sidewalks, driveways, parking lots, green roofs, decks, patios, gravel or stone walks, other pervious or non-pervious hardscapes, and other non-irrigated areas designated for non-development (i.e. open spaces and existing native vegetation).

B. Public Water System: In Belvedere the public water system with jurisdiction within the City boundaries is the Marin Municipal Water District (MMWD).

15.1.5 M.M.W.D. CODE SUBSECTION 13.02.021(5) AND LANDSCAPE PLAN REVIEW PACKET

Planning Staff shall be tasked with providing citizens an early education regarding the expectations of MMWD and legal requirements to comply with the Water District regulations.

All plans submitted to MMWD for review shall be accompanied by a completed Landscape Plan Review Packet. The packet is provided by MMWD to all applicants in order to help facilitate and organize submittals and includes a Water Conservation checklist (attached).

The Landscape Plan Review Packet outlines crucial information such as the Maximum Applied Water Allowance (MAWA), which is the upper limit of annual applied water for the established landscape area as specified above. It also explains the Estimated Total Water Use (ETWU) that is the total water used for a new landscaping area.

Planning Staff will have copies of this information on hand and will distribute the information early on in the Design Review process to applicants whose projects are large enough to meet the thresholds for WELO regulations. This will allow residents and applicants to be educated about MMWD requirements before compliance is required and will expedite the application process.

City Staff will have copies of MMWD Code Subsection 13.02.021(5) available to the public, should applicants be interested. Subsection 13.02.021(5) includes the requirements for interior fixtures as well as exterior landscaping requirements.

15.1.6 CONDITIONS OF APPROVAL

For projects that appear to meet the size thresholds requiring MMWD review, City Staff will require MMWD approval of landscape and irrigation prior to the issuance of a building permit or prior to completion of work if no permit is necessary. If a project has been determined by MMWD as exempt from review, then Staff will obtain a letter of exemption from the contact person in the Water Conservation Department at MMWD.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.2
REMOVAL OF SIGNIFICANT TREES

Adoption Date:	11/6/2006	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

Belvedere's oaks, buckeyes, redwoods, and madrones are important features of the City's landscape. The purpose of this memorandum is to establish guidelines for the exemption of the removal of trees from Title 20, Architectural and Environmental Design Review, pursuant to Section 20.04.015 of the Belvedere Municipal Code, as follows.

- Section 20.04.015 of the Belvedere Municipal Code (Ordinance 2004-05) provides Staff with the authority to exempt the removal of dying trees, "undesirable" trees, trees without privacy or screening characteristics, and immature trees from Design Review.
- Pursuant to Section 20.04.015, Design Review is required for landscaping changes when a visually significant portion of the property is affected. This includes the removal of visually significant trees. Significance can be determined by the size of the tree, the number of trees to be removed, and the relationship of the tree to the lot and surrounding development. City Staff will give special consideration to the preservation of redwood trees in the context of Design Review applications.
- Removing one or more trees native to Belvedere (such as oak trees) greater than 16 inches in diameter will be considered a significant landscaping change that will require approval of a Design Review application. A tree of this size is likely to be more than 50 years old, it may be visible from a great distance, and it may provide significant privacy protection. A tree of this size is also likely to have some social significance to Belvedere residents as a landmark and a reminder of Belvedere's natural setting.
- Tree removal that is a part of a larger project subject to Design Review approval by Staff or the Planning Commission or removal of a tree or trees required by a prior Design Review approval will also be subject to Design Review. With regard to whether or not the removal is part of a larger project, Staff will review prior approvals and discuss with the property owner the potential of a future project within a coming 12-month period.
- If there are other trees in the area that will minimize the loss of the tree, if the tree is not native to Belvedere, and if the adjacent residents approve of the tree removal, most tree removals can be exempted from Design Review pursuant to Section 20.04.015(B)(2) by means of a Statement of Exterior Changes application and a Staff field inspection.
- If a tree is a danger to life or property, the Building Official can determine that an emergency exception is necessary under Section 20.04.020(C) and authorize the work.
- Under this Section, the property owner is required to come back with a plan to correct the problem created by the loss of the visually significant landscaping.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.3
HEIGHT & EXISTING GRADE INTERPRETATION

Adoption Date:	5/11/2009[1]	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

15.3.1 BACKGROUND

Belvedere's unusual topography and dramatic grade changes have led to various challenges to measuring height pursuant to Section 19.08.224 and 19.08.240 of the Belvedere Municipal Code. The intent of this policy is to describe the method used by City Staff when reviewing measurements of height of buildings, fences, walls, and other structures.

At the April 20, 2004 Planning Commission meeting, the Planning Commission recommended a Zoning Ordinance amendment to modify the definition of "grade." The new definition would establish grade as existing grade or grade at the time "new work was proposed." The earlier definition had established grade as original grade or grade existing prior to any work ever having taken place. The City Council later adopted the Planning Commission's recommended definition on January 3, 2005 as part of Ordinance 2005-1.

At this time, grade and height are defined as follows:

> 19.08.224 Grade, existing. "Existing grade" means the ground level existing prior to the commencement of any new work on the site. (Ord. 2005-1 §2, 2005; Ord. 89-1 §1 (part), 1989.)
>
> 19.08.240 Height. "Height," when applied to a structure, means the vertical distance from the existing grade to the highest point of the structure directly above it, excluding chimneys. "Grade" is as defined in Section 19.08.224. (Ord. 89-1 §1 (part), 1989.)

Pursuant to Sections 19.08.224 and 19.08.240, City of Belvedere staff measures height as the distance between the highest point of the structure (excluding chimneys) to the lowest point of existing grade below. For example, Staff does not measure the height of buildings or other structures from a point located within an interior basement area. Staff does not average the slope of a hillside nor average any building features such as gable roofs, etc.

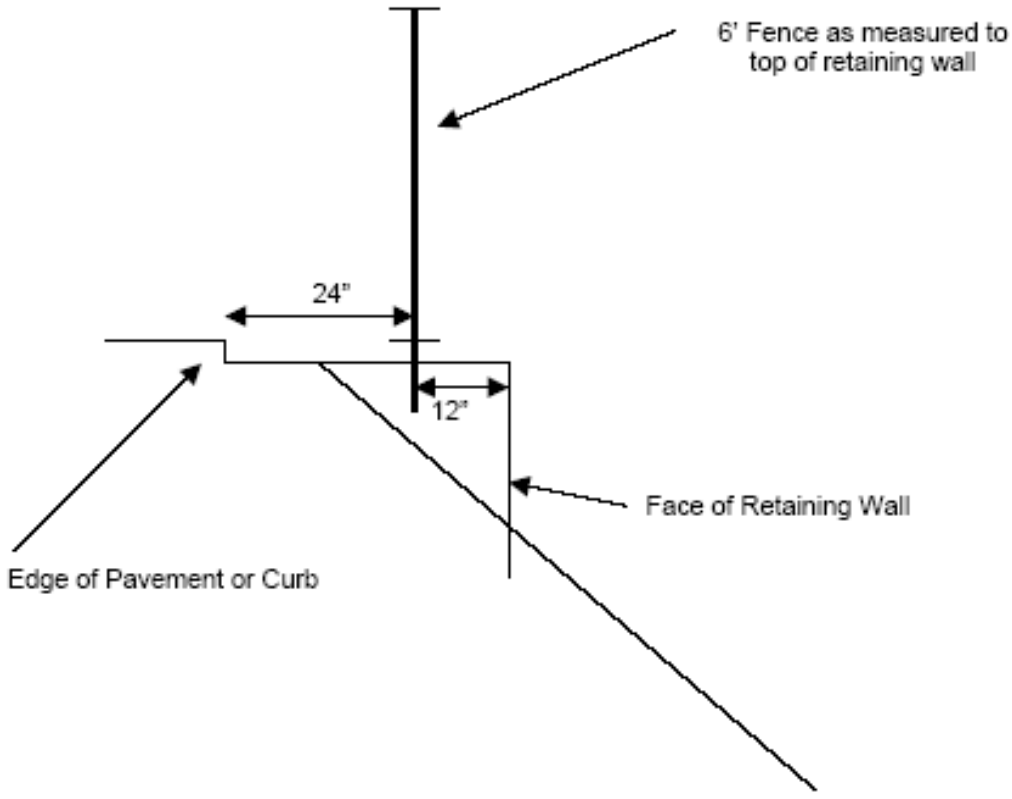
This policy was reviewed by the Planning Commission on September 18, 2007 and June 17, 2008.

[1] Recommended by Planning Commission 6/17/2008

15.3.2 POLICY

Interpretation of Sections 19.08.224, "Grade, existing," and 19.08.240, "Height":

1. Building height is the distance between the highest point of the structure (excluding chimneys) to the lowest point of existing grade below.
2. Existing grade is the lowest natural or artificial level of the soil or paved ground surface within a 1-foot-wide perimeter of the exterior of a structure. Height is not measured from a point located within an interior basement area. Where no building exists, the perimeter shall either be the outline of the prior building, or, if never previously developed, the natural contours of the land.
3. Fences built upon a retaining wall must be set back 1 foot from the edge of the retaining wall for the fence height to be measured from the top of the retaining wall, not the lower ground level below. See the diagram below.
4. In determining conformance to Zoning Ordinance height limits, neither the slope of a hillside nor any building features such as gable roofs, etc. are averaged.
5. To determine grade, the City shall rely upon a topographic survey prepared by a licensed surveyor.
6. In the case of required handrails and/or guardrails on decks, piers, parking structures, balconies or similar structures, height is measured to the deck surface, not to the top of the handrail or guardrail.
7. Existing grade in the case of structures built over the water shall be measured to the point specified for the particular Zoning District. If the Zoning District does not provide a reference for grade in inundated areas, then existing grade shall be the point established as "Summer Level" in Belvedere Lagoon and "Mean High Tide" in all other areas.



	CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL **POLICY 15.4** **FENCE REPAIR & REPLACEMENT**		
Adoption Date:	6/14/2010	**Adopted by:**	City Council Motion
Revised Date:	9/10/2018[1] 3/11/2019	**Revised by:**	City Council Resolution No. 2018-29 City Council Resolution No. 2019-04
Authority:	City Council		

15.4.1 BACKGROUND

Belvedere's zoning ordinance requires design review approval for fences and trellises (Belvedere Municipal Code Section 19.48.190). Fences typically indicate property boundaries, although not all fences are built on a boundary line. The Design Review process allows the City to evaluate new structures and to reevaluate the replacement of existing structures and their relationship to real property boundaries.

15.4.2 COMMENTS

Repair and replacement of existing fences are not specifically mentioned in the Belvedere Municipal Code. Therefore, the Planning Department has developed this policy to establish a benchmark by which a replacement or a repair of a fence is distinguished from a new fence requiring Design Review approval.

For the purpose of distinguishing repair and replacement fences from a new fence requiring Design Review, Planning Staff refers to the definition in Section 19.08.355 which states, in part:

> "New structure" for purposes of this Title and Title 20 means an entirely new building from grade up, or new construction following the removal of more than fifty percent of the total exterior wall and roof area from the grade up, including all exterior openings."

Planning Department Staff further relies on the definition of structure as "anything constructed or erected, including any building, fence or wall, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground" (BMC Section 19.08.520).

In order to provide expedient service to the Belvedere community, Planning Department Staff has developed a procedure for Exemptions from Design Review (see Policy 15.7 of this Manual). Repair or replacement of less than 50 percent of an existing fence may be reviewed for Exemption from Design Review. Temporary deer fencing, whether installed with or without a

[1] Recommended by Planning Commission 6/18/2018

permit in the past, is not deemed an existing fence. Repair or replacement of temporary deer fencing is to be treated as a new fence for purposes of Design Review.

15.4.3 POLICY

In order for a replacement fence to be considered exempt from Design Review, the applicant must show that not more than 50 percent of the existing fence is to be removed and reconstructed. Also, the replacement fence must be of the same design and location as the previously existing fence. A site plan showing the location of the fence in relation to property lines will be required. Adjacent neighbor signatures may be recommended. Photographs of the previously existing fence are usually helpful.

If it is shown that more than 50 percent of the linear measurement of a fence is to be repaired or replaced, Design Review for the fence is required.

15.4.4 DOCK FENCES

Fences on docks are discouraged and should be granted only when necessary to provide a boundary for the dock, such as in the case of abutting docks. In the R1-L and R-2 zoning districts fences may be considered based on the following factors:

- The fence should not substantially impact views from neighboring properties or the public view.
- The fence should be three (3) feet or less in height as measured from the top of the dock.
- The extent to which container landscaping could provide the same effect as a dock fence.
- Whether the dock abuts another dock.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.5
EAVES ALLOWED IN REQUIRED SETBACKS

Adoption Date:	5/11/2009[1]	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

15.5.1 BACKGROUND

Belvedere Municipal Code Title 19 Zoning provides development guidelines for all projects in the City's various zoning districts. Chapter 19.48 of the Zoning Code specifically addresses the minimum required yards and setbacks for a parcel. This policy will discuss Section 19.48.190 (H) of the Zoning Code, one of the exceptions to the required minimums.

Planning Department Staff, applicants and the Belvedere Planning Commission have relied upon this section of the Zoning Code in the past. Examples include 17 Eucalyptus Road, 125 Belvedere Avenue and 8 Eucalyptus Road. In each of these cases, a portion of the roof eave was allowed to project into a required side yard without a Variance. For consistency with future applications, this policy is based on the precedent set by these projects.

15.5.2 COMMENTS

The first section of Chapter 19.48 Yards and Setbacks establishes the general guidelines of the section. The first section, 19.48.010, states "Required yards shall be measured from and parallel to the front, side or rear property line, as appropriate to the measurement, to the nearest point of a structure on the parcel. No building, accessory building, or other structure, or portion thereof (including roof overhangs), shall be constructed in any yard or between the street line and the setback line within such lot, except as is expressly provided in this Chapter."

Later in the Chapter, Section 19.48.190 lists ten (10) exceptions from required yards and these are enumerated as "A" through "J." Subsection "H" has been applied only rarely since the adoption of the Zoning Code in 1989. This subsection states:

> "Where a building wall is not parallel to a parcel line, or where a building wall does not follow a continuous unbroken alignment, a portion of the roof overhang may project into a required yard provided that:
>
> 1. The average depth of the setback is at least equal to the required setback otherwise required for the parcel, and
> 2. The setback is never less than seventy percent of the required setback otherwise required for the parcel."

[1] Recommended by Planning Commission 2/17/2009

15.5.3 POLICY

Measurement of Yards and Setbacks, Chapter 19.48
Common architectural and engineering practice dictates that the distance from any line and any point is measured at a 90 degree angle from the line. Chapter 19.48 follows this convention by describing the required yards for a parcel as "measured from and parallel to" each property line.

Certain Exceptions From Requirements
The applicability of subsection "H" for any project is predicated on a certain building wall configuration in relation to the parcel line. The defining first sentence states, "Where a building wall is not parallel to a parcel line, or where a building wall does not follow a continuous unbroken alignment, a portion of the roof overhang may project into a required yard…"

Staff's interpretation of Section 19.48.190 (H) relies first and foremost upon the unique situation where the building wall closest to the adjacent parcel line is not parallel, or, as the Code continues, the building wall does not follow a continuous unbroken alignment. A "building wall" is not defined by the Municipal Code. However, the following sources provide Staff with a common understanding:

- American Architecture: An Illustrated Encyclopedia defines wall as "An upright structure that serves to enclose, support, or subdivide a building, usually presenting a more or less continuous surface except where it is penetrated by openings such as doors and windows."
- Dictionary.com defines wall as "Any of various permanent upright constructions having a length much greater than the thickness and presenting a continuous surface except where pierced by doors, windows, etc.: used for shelter, protection, or privacy, or to subdivide interior space, to support floors, roofs, or the like, to retain earth, to fence in an area, etc."

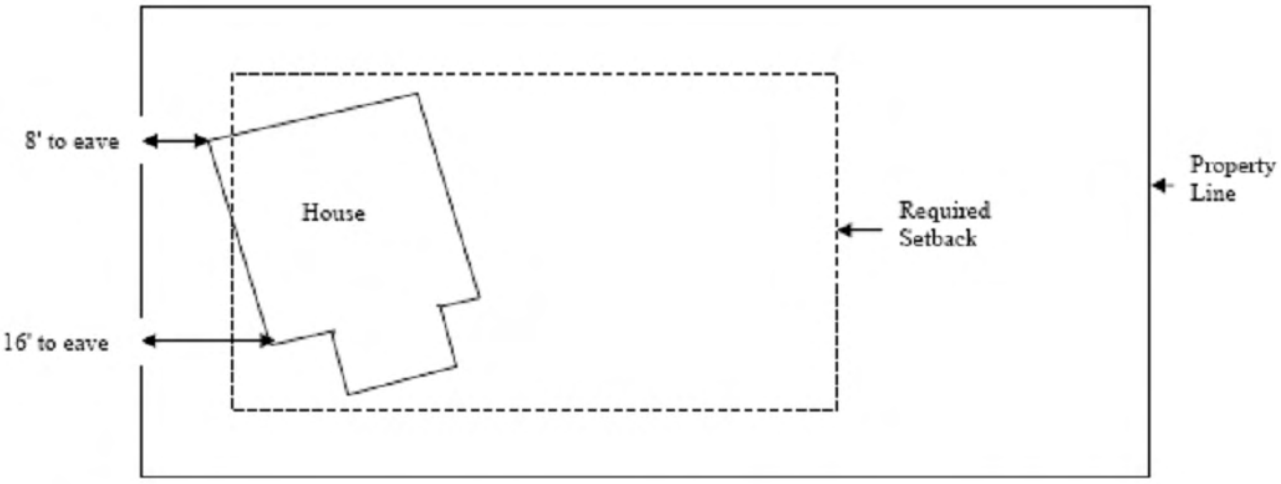
For the purposes of this policy, a building wall means any one continuous surface except where penetrated by doors or windows, not to be confused with the entire side of a building. As allowed by the Code, eaves for small breaks in the wall plane such as for bay windows, vestibules and similar architectural features would account for a "broken" alignment along a straight property line. Conversely, a property line might have a "broken" or staggered alignment (not parallel or even straight) in relation to a continuous building wall.

Policy Summary
1. For the purposes of this policy, building wall means any one continuous surface except where penetrated by doors or windows, not to be confused with the entire side of a building. When a building wall is not parallel to the property line, the exception described in subsection "H" for a required yard is allowed with specific limitations. These limitations are listed as:
    a) The average depth of the setback is at least equal to the required setback otherwise required for the parcel, and
    b) The setback is never less than seventy percent of the required setback otherwise required for the parcel.

2. In the case of the first limitation, the average depth of the setback is determined by measuring the greatest setback and the shortest setback of a wall to the property line where the proposed encroachment into the setback would occur. The average is taken by adding the two measurements and dividing by two. As the Code states, the average setback must be equal or greater than the required setback. In the case of the second limitation, the setback must in no case be less than 70 percent of the required setback otherwise required for the parcel.
3. In sum, the policy allows a less than significant "portion" (a part or section) of a roof overhang of one "wall" (one continuous, unbroken surface) to encroach into a required yard or setback, only when that wall and the property line are not substantially parallel. The average distance of the one wall to the parcel line must be equal to or greater than the required setback for the parcel. The encroachment must not create a setback that is less than 70 percent of what is otherwise required for the parcel. The determinations of whether a building wall is substantially parallel and how much of an eave is a "portion" are determined on a case-by-case basis by Belvedere Staff and/or the Planning Commission.

Diagram.

Illustration of Interpretation of BMC Section 19.48.190 (H), Residential zones – Certain facilities and structures permitted in yards.



Building wall minimum = 8'
8' > 70% of 10' (required setback)

Building wall maximum = 16'
Average = 12' (8+16 divided by 2 = 12)
12' > 10' (required setback)

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.6
APPROPRIATE COLORS & MATERIALS

Adoption Date:	5/11/2009[1]	**Adopted by:**	City Council Motion
Revised Date:	9/9/2013[2] 3/11/2019[3] 3/11/2019 6/14/2021[4]	**Revised by:**	City Council Resolution No. 2013-32 City Council Resolution No. 2019-07 City Council Resolution No. 2019-04 City Council Resolution No. 2021-14
Authority:	City Council		

15.6.1 BACKGROUND

On December 16, 2008, and January 20, 2009, the Planning Commission reviewed a written interpretation of Belvedere Municipal Code Section 20.04.140, "Materials and Colors Used," which was developed to clarify appropriate direction to applicants regarding administrative or staff-level Design Review determinations. The policy maintains applicants' and residents' ability to request Planning Commission approval for any project color or material on a case-by-case basis. The policy also addressed long-standing procedures used by the City in the construction of street repairs, park improvements, and utility projects. One resident addressed the Commission and raised concerns about the possibility that the policy could guide Planning Commission decisions. The Commission adopted a motion recommending the policy with changes, including wording to clarify that the policy is for administrative decisions only.

15.6.2 COMMENTS

Staff approvals of new colors and materials are necessarily conservative. The Planning Commission has greater leeway under the Belvedere Municipal Code to review project colors and materials. A succinct policy that defines staff's interpretation of the Code that is reviewed and approved by the Planning Commission and City Council, such as the attached, will encourage a consistent application of the criteria and will provide further guidance to applicants seeking City approvals.

15.6.3 INTERPRETATION OF SECTION 20.04.140 FOR STAFF LEVEL APPROVALS ONLY

These guidelines for interpretation of shall apply to Staff Level approvals only, and not to consideration by the Planning Commission, who shall consider all factors described by the Architectural and Environmental Design Review Code.

[1] Recommended by Planning Commission 1/20/2009
[2] Recommended by Planning Commission 4/4/2013
[3] Recommended by Planning Commission 2/19/2019
[4] Recommended by Planning Commission 5/18/2021

1. Colors that are not considered “earth tone” and “wood tone”, specifically white and black can be reviewed as a Design Review Exception, provided that the color is compatible with building setting, compatible with the surrounding neighborhood, and that the color does not stand out. Bright whites should be avoided in favor of soft muted whites. Black roofs may be approved if they fit with in the surroundings and do not cause reflection. Staff shall have the authority to elevate the review to a full Planning Commission review at its discretion.
2. The predominant color of a structure should not cause a structure to stand out.
3. As the Design Review criteria require, trim colors and window colors should be compatible with the other building colors. White and off-white are considered complementary trim colors and may be used on house trim, including windows and doors, as well as on garage doors, fences, and other architectural elements.
4. Metals which develop an attractive, naturally-oxidized finish may be left unpainted, but may not be clear-coated to enhance shine. Brush metal finishes without an oxidized patina may be deemed appropriate for use in certain circumstances. Other exposed metal should be: painted flat black, painted to resemble a naturally oxidized finish, or painted a color which minimizes their visibility. This includes fences, railings, metal roof vents, flashing, conduit and other appurtenances.
5. Stone pavers and veneers should be primarily darker colors in the grey, brown, or serpentine range. Manufactured stone is discouraged.
6. Applicants may view the selection of samples and identify the sample that most closely matches their proposed color. Concrete pavement on public property, such as in the right-of-way or public easement, shall meet Public Works Department standards and specifications.
7. Decorative features, such as streetlights, flagpoles, and permanent park installations, such as stone benches, that are located on public property are subject to Design Review and other Planning approvals. Major Public Works projects, such as the San Rafael Avenue Seawall and Beach Road median improvements, are subject to Design Review and other Planning approvals. Other Public Works projects located in the public right of way are exempt from Design Review under the following conditions:
    a) Incorporate landscape screening whenever possible.
    b) Retaining walls are constructed of wood, stone or concrete and generally complement adjacent building and paving materials
    c) Existing retaining walls are replaced or repaired in kind.
    d) Utilities are placed below grade whenever possible.
    e) Minor landscape projects, street furniture and park furniture are reviewed by the Parks and Open Space Committee.
8. Large, unbroken expanses of window glazing is generally discouraged as it may cause excessive glare and light reflection during the day, and light transmission during the night. In determining whether window glazing is appropriate, mitigating factors include, but are not limited to, the property’s location near water and risk of light reflection off water, effectiveness of landscape screening, use of light reduction glass, and use of architectural elements to reduce light impacts.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.7
EXEMPTIONS FROM DESIGN REVIEW

Adoption Date:	6/14/2010	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

15.7.1 BACKGROUND

Design Review is required for any exterior change in all zoning districts in the City of Belvedere, whether or not a building permit is required (Belvedere Municipal Code Section 20.04.015). Design Review approval is also required prior to the granting of an Exception to Total Floor Area (BMC 19.52.120). At any time that a building permit is required, the building department requires proof of Design Review approval prior to the issuance of a building permit, or a determination that the project is exempt from Design Review.

The Belvedere Municipal Code allows for very few exemptions from Design Review. These exemptions are enumerated in Belvedere Municipal Code Section 20.04.015B as follows:

> "1. Changes in color(s) and/or roof or siding material(s) of an existing structure, when such changes are consistent with the provisions of Section 20.04.140;
> "2. Landscape changes and/or additions to existing landscaping, when such changes/additions are not part of a larger project subject to approval by the Planning Commission, including but not limited to the addition of trees which typically will not exceed a height of 12 feet at maturity, removal of trees, and changes to landscaping not visible to the public under normal circumstances;
> "3. Minor changes to previously approved plans, which the City Planner determines do not alter the intent of the approved design;
> "4. Any other work determined by the Planning Director to be minor or incidental in nature and consistent with the intent and objectives of this Policy."

Please note that the removal of trees is the subject of a separate policy document (see Policy 15.2 of this Manual).

Replacements of materials in kind, such as roof or siding materials, paving, and other exterior improvements that do not effect a change of existing conditions would be considered exempt and not require additional review. These projects may require a Building Permit only.

15.7.2 COMMENTS

The Design Review process is in place to assure consistency with the goals and intents of the Belvedere Municipal Code and the Belvedere General Plan for the greater benefit of the community. Staff recognizes that the formal Design Review process and application requirements are not appropriate for all types of projects and that some property improvements can be exempt from Design Review as described above. However, these exemptions require the judgment of Planning Department staff, and require a review process. The review process documents exempted applications and staff offers expedited review for the benefit of property owners and applicants.

A written record for each exemption provides documentation for internal review as well as for public review. The challenge faced by City staff was how to make the current Design Review application requirements fit the need for documented exemptions in an efficient manner. In order to provide an expedited service to residents seeking exemption approval, the eight-page Design Review application form has been supplanted with a one page form. Supplemental application requirements have similarly been reduced in scope.

15.7.3 POLICY

STATEMENT OF PROPERTY IMPROVEMENTS (DESIGN REVIEW EXEMPTION FORM)

A Design Review Exemption form has been created as a template for the written record. The one page form asks for basic information about the property, the property owner, the applicant and the proposed project. Photographs demonstrating existing conditions are accepted. A simple site plan may be necessary if improvements trigger additional development standards, such as required setbacks. Planning staff will make final determinations for required supplemental information on a case-by-case basis upon review of an application.

Applicants are required to attest that the proposed improvements conform to the Design Review Exemption criteria as stated on the reverse of the form. For example, a new roof must be consistent with the color and materials provision of BMC 20.04.140D that states "roof materials ... should have nonglossy, earthtone or woodtone finishes that minimize glare and are compatible with their environment and surroundings."

Applicants must also attest that the project does not conflict with any prior conditions of approval for the property. For example, that a window of transparent glass does not replace a translucent window as required by a condition of approval intended to protect neighbor privacy.

Applications may be reviewed and either denied or recommended for approval by the Associate/Assistant Planner. All applications recommended for approval must be reviewed and given final determination by the City Planner. Staff processes requests for exemptions within 24 hours of receiving a complete application. Recorded exemptions are kept in the Planning Department address files for two years from the date of approval.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.8
INCREASES TO SCOPE OF DEMOLITION

Adoption Date:	11/6/2006[1]	**Adopted by:**	City Council Motion
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

Section 20.04.020(B)(3) of the Belvedere Municipal Code is interpreted to include the following activities and procedures:

1. Minor increases to the approved scope of demolition work under a Demolition Permit granted by the Planning Commission for a partial demolition project may be processed and approved administratively by City staff with the concurrence of the Planning Commission Chairman, City Planner and City Manager. A public notice of the approval of the increase to the scope of demolition will be sent to all residents and property owners within 100 feet of the subject site not less than 10 days prior to the date the approval takes effect. The approval may be appealed to the Planning Commission within 10 days of such notice. The appeal will be scheduled before the Planning Commission at the next available meeting.

2. Minor increases shall consist of the removal of building elements that have no adverse impacts to adjacent residents or City property, that do not constitute 10% or more of the approved scope of demolition, and that do not increase the scope of any Exception or Variance applicable to the property.

3. Increases to the scope of demolition may be allowed in the following unforeseen and reasonably unforeseeable situations: substandard conditions of existing walls and roofs, as well as their supporting floors, and foundations. The burden of establishing unforeseeability is on the applicant.

4. Pursuant to Section 20.04.020(B)(3) of the Belvedere Municipal Code, applicants or property owners are limited to three (3) such administrative approvals for changes to either the scope of demolition or other exterior changes subject to the Design Review Ordinance of Title 20 of the Belvedere Municipal Code for the lifetime of the underlying Design Review approval. For all purposes relevant to this section, the cumulative impact of all such requests for approval shall be considered in evaluating whether the increase is "minor."

5. Under no circumstances will an applicant be given administrative approval to raze a residence if the Planning Commission has approved the Demolition Permit "as applied for," meaning a partial demolition.

[1] Recommended by Planning Commission 6/20/2006

6. Staff will evaluate the requested increase to the scope of demolition to determine whether or not there would be adverse impacts related to construction noise or activity, length of construction, or privacy created by the increase, or whether or not the building feature to be removed is within a required setback, or otherwise increases the scope of any Variance or Exception.

7. Notwithstanding the foregoing, if City staff determines that the proposed minor changes to the scope of the previously approved Demolition Permit may be inconsistent with the goals, regulations and purposes of the Zoning Ordinance or Design Review Ordinance, or inconsistent with the terms of the operative Design Review approvals, the City Planner will refer the application to the Planning Commission for consideration and action.

CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

POLICY 15.9
WIRELESS TELECOMMUNICATION FACILITIES

Adoption Date:	12/10/2018	**Adopted by:**	City Council Resolution No. 2018-36
Revised Date:	3/11/2019	**Revised by:**	City Council Resolution No. 2019-04
Authority:	City Council		

15.9.1 PURPOSE AND INTENT

The purpose and intent of this Administrative Policy is to provide uniform and comprehensive regulations and standards for the installation, design, permitting, collocation, modification, relocation, removal, operation, and maintenance of wireless telecommunication facilities in Belvedere, in accordance with Belvedere Municipal Code Chapter 19.94, and consistent with State and Federal laws and regulations. The standards and procedures herein are intended to protect the public health, safety, and welfare by protecting the unique aesthetic character of the City, its natural setting, and its neighborhoods, while balancing the benefits provided from wireless service facilities. Nothing in this Administrative Policy shall be interpreted or applied to: 1) effectively prohibit or materially inhibit the provision of wireless telecommunication service; 2) unreasonably discriminate among providers of functionally equivalent wireless services; 3) deny any wireless telecommunication service request based on the environmental and/or health effects of radio frequency emissions to the extent that such facilities comply with Federal Communication Commission regulations; 4) prohibit any collocation or modification that the City may not deny under Federal or State law; or 5) impose any unfair, unreasonable, discriminatory, or anticompetitive fees that exceed the reasonable cost to provide the service for which the fee is charged.

15.9.2 DEFINITIONS

A. Accessory Equipment. Means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment structures, pedestals, meters, vault, splice boxes, and surface location markers.

B. Antenna. Means that part of a wireless telecommunication facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including but not limited to, cellular, personal communication services, and microwave communications. Such devices include but are not limited to, directional antennas such as panel antennas, microwave dishes, and satellite dishes; omnidirectional antennas and wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

C. Base Station. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

D. Collocation. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.

E. CPUC. Means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or it's duly appointed successor agency.

F. Eligible Facilities Request. Means the same as defined by Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified in 47 U.S.C. § 1455(a), and defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change its physical dimensions and involves a: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

G. Eligible Support Structure. Means the same as defined by FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) (Eligible Facilities) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

H. FCC. Means the Federal Communications Commission or a duly appointed successor agency.

I. FCC Shot Clock. Means the reasonable time frame within which the City generally must act on a given wireless telecommunications application, as defined by the FCC and as may be amended.

J. Personal Wireless Services. Means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

K. Personal Wireless Service Facilities. Means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

L. 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.

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

N. Substantial Change. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). This definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

(1) For towers outside the pubic rights-of-way, a substantial change occurs when:
   (a) The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
   (b) The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
   (c) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
   (d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

(2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
   (a) The proposed collocation or modification increases the overall

height more than 10% or 10 feet (whichever is greater); or

(b) The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or

(c) The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or

(d) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or

(e) The proposed collocation or modification involves excavation outside the area in proximity to the structure or other transmission equipment already deployed on the ground.

(3) In addition, for all towers and base stations wherever located, a substantial change occurs when:

(a) The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the Director of Planning and Building; or

(b) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets, or excavation that is inconsistent with the thresholds for a substantial change described in this subsection.

O. Tower. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (i.e., a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees, and lattice towers.

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

Q. Utility Pole. Means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary for the provision of electrical or other utility services regulated by the California Public Utilities Commission.

R. Wireless. Means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

15.9.3 APPLICABILITY

A. Applicability. This Policy shall apply to all existing wireless facilities within the City and all applications and requests for approval to construct, install, modify, collocate, relocate, or otherwise deploy wireless facilities in the City, unless exempted. Eligible facilities requests to collocate, replace, or remove transmission equipment on an existing wireless tower or base station shall be reviewed under the Eligible Facilities Requests section of this Policy.

B. Exempt. This Policy shall not apply to: 1) wireless facilities owned and operated by the City; 2) wireless facilities installed on City property in the public right-of-way pursuant to a valid master license agreement with the City; 3) amateur radio facilities; 4) over-the-air reception devices subject to 47 C.F.R. §§ 1.4000 et seq. as may be amended, which includes satellite television dishes no greater than 1 meter in diameter; 5) wireless facilities installed completely indoors and intended to extend signals for personal wireless services; or 6) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation transmission, and distribution subject to CPUC General Order 131-D.

15.9.4 REQUIRED APPROVALS

A. Conditional Use Permit and Design Review Approval. A conditional use permit pursuant to BMC Chapter 19.80 and as set forth in this Policy, and design review approval pursuant to BMC Chapter 20.04, is required for all new and substantially changed wireless facilities.

B. Other Permits and Regulatory Approvals. In addition to any conditional use permit or design review approval required by the City, the applicant must also obtain all other permits and regulatory approvals required by Federal, State, and/or local law, which include approvals required by other departments within the City. Any permit or approval granted pursuant to this Policy and the Municipal Code, or deemed granted by law, shall remain subject to any and all lawful conditions and/or legal requirements associated with such approvals.

15.9.5 EMERGENCY DEPLOYMENT

In the event of a declared Federal, State, or local emergency, or when otherwise warranted by conditions that the City deems to constitute an emergency or a necessity, the Director of Planning and Building may approve the installation and operation of temporary wireless telecommunications facilities (cells on wheels or "COWs"), sites on wheels ("SOWs"), cells on light trucks ("COLTs"), or other similarly portable wireless facilities, subject to such reasonable conditions as the Director deems necessary in her/his discretion.

15.9.6 APPLICATION REQUIREMENTS

A. Application Required. No application for a conditional use permit for a wireless facility shall be approved except upon a duly filed application consistent with this Policy and any other written rules the City may establish from time to time in any publicly stated format.

B. Application Content. Applications for a conditional use permit for a wireless facility must include all information and materials required by the Director of Planning and Building. The City Council authorizes the Director to develop, publish, and from time-to-time update or amend, wireless facility conditional use permit application requirements, forms, checklists, informational handouts, and other related materials that the Director finds necessary, appropriate, or useful for the processing of any wireless facility application. All applications shall require that the applicant demonstrate that the proposed project will comply with all applicable health and safety laws, regulations, or other rules, which include without limitation building codes, electrical codes, and all FCC rules for exposure to radio frequency emissions.

C. Procedures for a Duly Filed Application. Any application for a conditional use permit for a wireless facility will not be considered duly filed unless submitted in accordance with the procedures in this subsection.

(1) Pre-Submittal Conference. Before an application submittal, the applicant must schedule and attend a pre-submittal conference with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant's scheduling request. The pre-submittal conference is intended to streamline the review process through discussion that includes without limitation issues related to compliance with City rules and regulations; generally applicable rules for health and safety; potential aesthetic and concealment issues; and application completeness issues. To mitigate any unnecessary delays due to application incompleteness, applicants are encouraged to bring any draft applications or other materials so that City staff may provide informal feedback and guidance regarding whether such applications or other materials may be incomplete or otherwise unacceptable.

(2) Submittal Appointment. All applications must be submitted to the City at a pre-scheduled submittal appointment with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant's scheduling request. Any application received outside of a submittal appointment, whether delivered in-person, by mail, or through any other means, shall not be considered duly submitted.

D. Applications Deemed Withdrawn. Any application for a wireless facility will be automatically deemed withdrawn if the applicant fails to substantively respond to the City within 90 calendar days after the City determines in writing that an application is incomplete. The Director of Planning and Building may, in her/his reasonable discretion, grant a written extension for up to an additional 30 calendar days.

E. Peer and Independent Consultant Review.

(1) Authorization and Scope. The City Council authorizes the Director of Planning and Building, in her/his discretion, to select and retain an independent consultant(s) in connection with any wireless facility conditional use permit application. The Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities, including without limitation permit application completeness or accuracy; pre-construction planned compliance with applicable regulations for exposure to radio frequency emissions; post-construction actual compliance with applicable regulations for radio frequency emissions; whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; the applicability, reliability, and/or sufficiency of any information, analyses, or methodologies used by the applicant to reach any conclusions about any issue within the City's discretion to review; and any other issue that the Director determines requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public hearings, and/or attend meetings with City staff and/or the applicant.

(2) Consultant Fees; Deposits. If the Director of Planning and Building elects to retain an independent consultant(s) in connection with any wireless facility permit application the applicant shall pay the reasonable costs in connection with the services provided. Before the independent consultant(s) may perform any services, the applicant shall deposit with the City an amount equal to the estimated costs for the services to be rendered as determined by the Director. If the deposit exceeds the total costs for consultant services, the Director shall promptly return any unused funds after the wireless facility has received final City inspection or has is finally disapproved by the City. If the reasonable costs for consultant services exceeds the deposit, the Director shall invoice the applicant for the balance which shall be promptly paid by the applicant. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

15.9.7 FINDINGS

A. Generally Applicable Findings. Where a wireless telecommunications facility requires a conditional use permit under this Policy, in addition to the generally applicable findings for all conditional use permits, the following additional findings are required:

(1) The proposed wireless facility complies with all applicable provisions of this Policy.

(2) The proposed wireless facility has been designed and located to achieve compatibility with the community to the maximum extent possible.

(3) The applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC rules and regulations for human exposure to radio frequency emissions.

(4) The applicant has demonstrated a good-faith effort to identify and evaluate preferred alternative locations and potentially less-intrusive alternative designs for the proposed wireless facility.

(5) The applicant has demonstrated a meaningful comparative analysis that shows all preferred alternative locations and less intrusive alternative designs identified in the administrative record, if any, are either technically infeasible or unavailable.

B. Additional Findings In Right-of-Way. In addition to the findings in paragraph (A) above, the following findings are required for a wireless facility to be located in a public right-of-way.

(1) The applicant has provided substantial written evidence supporting its claim that it has the right to enter the public right-of-way pursuant to Federal or State law, or the applicant has entered into an agreement with the City permitting it to use the public right-of-way.

(2) The applicant has demonstrated that the wireless facility will not interfere with the use of the public right-of-way, existing underground infrastructure, or the City's plans for modification or use of the location.

15.9.8 LIMITED EXEMPTION; APPEALS

A. Limited Exception. If the applicant claims that strict compliance with any provision of this Policy would effectively prohibit its ability to provide personal wireless services, the Planning Commission or City Council on appeal, may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition of wireless service if all of the following findings are made.

(1) The proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii) as may be amended or superseded.

(2) The applicant has provided a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility.

(3) The applicant has provided a written statement that contains a detailed and fact specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this Policy.

(4) The applicant has provided a meaningful comparative analysis with factual reasons as to why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, the public, or any other source) are not technically feasible of potentially available to reasonably achieve the applicant's reasonably and clearly defined technical service objectives of the proposed wireless facility.

(5) The applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective of the proposed wireless facility. The City shall have the right to hire an independent consultant, at the applicant's sole expense, to evaluate the issues raised by any exception request.

B. Appeals. The applicant may file an appeal with the City Council from any denial, approval, or conditional approval of a wireless facility. Said appeal shall be in writing and shall be filed with the City Clerk not later than 10 calendar days after the Planning Commission's action. For purposes of filing an appeal, if the final day to appeal falls on a City Hall observed holiday or a day when City Hall is closed, the final day to appeal shall be extended to the next day City Hall is open for public business. The appeal shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this Policy, the Municipal Code, and/or Federal and State law, and shall be accompanied by a filing fee as is hereafter fixed from time to time by City Council resolution. The City Council shall hold a de novo public hearing to consider the appeal. The City Clerk shall, not less than 10 calendar days prior to the date set for the City Council hearing on the appeal, give written notice to the applicant, and all residents and property owners within a 300-foot wide radius of proposed wireless facility, of the date, time and place of the public hearing. The Council may affirm, reverse, remand or modify the decision of the Planning Commission.

15.9.9 STANDARD CONDITIONS OF APPROVAL

In addition to compliance with the requirements of this Policy, upon approval, whether approved by the City or deemed approved by the operation of law, all wireless facilities shall be subject to each of the following conditions of approval, as well as any modification to these conditions or additional conditions of approval deemed necessary.

A. Permit Term. The permit will automatically expire 10 years and one day from its issuance, except when California Government Code section 65964, as may be amended, authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification, or other change to the wireless facility, which includes without limitation any permit or other approvals deemed approved by operation of law, will not extend the term limit unless expressly provided otherwise or required by Federal or State law.

B. Strict Compliance with Approved Plans. Before the permittee submits any applications to the Building Department, the permittee must incorporate the conditional use permit for the wireless facility, all conditions associated with the permit, and approved photo simulations, into the project plans (the "Approved Plans"). The permittee must construct, install, and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications, or other changes to the Approved Plans, whether requested by the permittee or by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director of Planning and Building's prior review and approval, who may refer the request to the Planning Commission in her/his discretion. The permittee shall submit an as-build drawing within 90 days after installation of the wireless facility.

C. Build Out Period. A conditional use permit for a wireless facility will automatically expire 1 year from the approval or deemed-approved date unless the permittee obtains all other permits and approvals required to install, construct, and/or operate the approved wireless facility, which includes any permits or approvals required by Federal, State, or local public agencies with jurisdiction over the property, the wireless facility, or its use. The Director

of Planning and Building may grant one written extension to a date certain, not to exceed 1 additional year, if the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

D. 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 according to the Approved Plans and all conditions in the conditional use permit. The permittee shall keep the site area free from litter and debris at all times and shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware of such graffiti or vandalism, at no cost to the City.

E. Compliance with Laws. The permittee shall maintain compliance at all times with Federal, State, and local statutes, regulations, orders, or other rules that carry the force of law (the "Laws") applicable to the permittee, the subject property, the wireless facility, or any use or activity in connection with the authorized use covered by the conditional use permit, which includes without limitation any Laws applicable to human exposure to radio frequency emissions. The permittee expressly acknowledges and agrees that this condition is intended to be broadly construed and that no other specific requirement in these conditions are intended to reduce, relieve, or otherwise lessen the permittee's obligations to comply with all Laws.

F. Radio Frequency Compliance. If the Director of Planning and Building determines that there is good cause to believe that the wireless facility may emit radio frequency emissions in excess of FCC standards, the permittee shall cooperate with the City to determine if the wireless facility is in compliance with all FCC rules regarding human exposure to radio frequency emissions including, but not limited to submittal of an affidavit signed by a radio frequency engineer certifying the wireless facility's compliance with FCC rules; providing technical data such as the frequencies in use, power output levels, and antenna specifications, necessary to evaluate compliance with FCC radio frequency limitations; and all other actions deemed necessary to measure compliance.

G. Adverse Impacts on Other Properties. The permittee shall avoid undue or unnecessary adverse impacts to nearby properties that arise from the construction, installation, operation, modification, maintenance, repair, removal, and/or other activities at the site. The permittee shall not perform work that involves heavy equipment or machinery except during normal construction work hours as authorized by the City, excepting work required to prevent immediate harm to persons or property. The City may issue a stop work order for any activity that violates this condition.

H. Inspections; Emergencies. The permittee expressly acknowledges and agrees that City representatives may enter the site and inspect the improvements and equipment thereon upon reasonable prior notice; provided however, that City representatives may, but will not be obligated to, enter the site area without prior notice in the event of an emergency or when the equipment threatens imminent harm to persons or property.

I. Contact Information. The permittee shall submit and maintain current basic contact and site information to the City, and shall notify the City of any changes to this information within 7 days of a change. This information includes but is not limited to: the name, address, email address, and 24-hour contact telephone number of the permittee, the owner, operator, and person(s) responsible for maintenance of the wireless facility; and legal status of the owner of the wireless facility including official identification numbers and FCC certification.

J. Performance Bond. Prior to the issuance of a building permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director of Planning and Building in an amount reasonably necessary to cover the cost to remove all improvements and equipment, and restore all affected areas, based on a written estimate from a qualified contractor with experience in wireless facilities removal.

K. Defend, Indemnify, Hold Harmless. The permittee shall defend with counsel acceptable to the City in its discretion, indemnify, protect, and hold harmless the City, elected and appointed officials, representatives, officers, and/or employees, from and against any and all claims, actions, or proceedings against the City, its elected and appointed officials, representatives, officers, and/or employees to attack, set aside, void, or annul an approval concerning a wireless facility conditional use permit, the wireless facility itself, or any related items or actions. Such indemnification shall include any and all liability damages, judgments, settlements, penalties, fines, and all defense costs including but not limited to attorneys' fees, expert witness fees, and any liability of any kind related to or arising from such claim, action, or proceeding. Nothing contained herein shall prohibit the City from participating in a defense of any claim, action, or proceeding.

L. Successors. All conditions of approval shall be binding to the permittee and all successors in interest to the permittee

M. Signage. All notices and signs required by the FCC and California Public Utilities Commission, and approved by the City, shall be posted on the site and include the permittee's emergency contact name and 24-hour telephone number.

15.9.10 ADDITIONAL CONDITIONS OF APPROVAL FOR FACILITIES IN THE PUBLIC RIGHT-OF-WAY

In addition to compliance with the Standard Conditions of Approval in Section 15.9.9, and the requirements of this Policy, upon approval, whether approved by the City or deemed approved by operation of law, all wireless facilities located in a public right-of-way shall be subject to each of the following conditions of approval.

A. The wireless facility shall be subject to such conditions, changes, or limitations as are deemed necessary by the City from time to time for the purpose of: protecting the public health, safety, and welfare; preventing damage to the public right-of-way and/or adjacent property; and preventing interference with pedestrian and/or vehicular traffic. The City may modify the permit to reflect such conditions, changes, or limitations pursuant to the public hearing procedures applicable to a wireless facilities application as set forth in this Policy, except the permittee shall be given notice by personal service or certified mail.

B. The permittee shall not move, alter, relocate, change, or interfere with any existing structure, improvement, or property without the prior written consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a wireless facility unless it is determined that it will not adversely affect the City or any residents, and the permittee pays all costs and expenses related to its relocation. Prior to commencement of any work pursuant to an encroachment permit the permittee shall provide the City with documentation to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way to be affected by the wireless facility.

C. The permittee shall repair at its sole cost and expense any damage attributed to the wireless facility and/or its installation, construction, improvement, or maintenance, including but not limited to subsidence, cracking erosion, collapse, weakening, or loss of lateral support to streets, sidewalks, walkways, curbs, gutters, trees, landscaping, utility lines and systems, underground utility lines and systems, sewer systems, sewer lines, and any and all improvements of any kind.

D. If the wireless facility will be located within the canopy of a street tree, or a protected tree on private property, or within a 10-foot radius of the base of such a tree (or such larger radius in the City's discretion), then prior to the issuance of a building permit, the permittee must submit a tree protection play prepared by a certified arborist for the review and approval of the Director of Planning and Building.

15.9.11 SITE LOCATION AND CONFIGURATION GUIDELINES

A. Purpose. The purpose of this section is to provide guidelines to applicants and the City regarding preferred locations and configurations for wireless facilities in the City, provided that nothing in this section shall be construed to permit a wireless facility in any location or configuration that would otherwise be prohibited by this Policy. The City shall consider the extent to which a proposed wireless facility complies with these preferences and whether there are feasible alternative locations and/or configurations that are more preferred under this section.

B. Preferred Locations. All applicants must, to the extent feasible, propose new wireless facilities in the locations according to the following preferences ordered from most preferred to least preferred:

(1) City owned property or structures outside the public rights-of-way.
(2) City owned property or structures inside the public rights-of-way.
(3) Open space scenic zone.
(4) Residential zones.
(5) Pedestrian-only public lanes.

C. Additional Analysis for Discouraged Locations. For all new sites proposed in the open space scenic zone, residential areas, or pedestrian-only public lanes, the applicant must submit an additional analysis identifying at least three more preferred locations and provide a meaningful comparative analysis as to why these locations are either not technically feasible or not potentially available.

D. Preferred Support Structures. All applicants must, to the extent feasible and potentially available, install the wireless facility on a support structure according to the following preferences ordered from most preferred to least preferred:

(1) Collocation with existing facilities.
(2) Roof-Mounted.
(3) Building-mounted.
(4) New free standing wireless towers or poles.

E. Undergrounding. All non-antenna equipment associated with the wireless facility must be placed underground to the extent feasible. When above-ground is the only feasible location for a particular type of equipment, and the equipment cannot be pole-mounted, such equipment shall be enclosed within a structure, shall not exceed a height of 5 feet and total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible.

F. Location. Each component of a wireless facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or create safety hazards. Each component of a wireless facility shall also be located so as not to obstruct public views.

15.9.12 DESIGN AND DEVELOPMENT STANDARDS

A. Generally Applicable Development Standards. All new wireless facilities and substantial changes to existing wireless facilities not covered under Section 6409 must conform to the following generally applicable development standards.

(1) **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the nature and/or built environment in a manner consistent and compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity.
(2) **Overall Height, Width, and Space Occupied.** Wireless facilities may not exceed the applicable height limit for structures in the zoning district where they are located. All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC requirements. Wireless facilities shall be designed to occupy the least amount of space that is technically feasible.
(3) **Setbacks.** Wireless facilities may not encroach into any applicable setback in the zoning district where they are located.
(4) **Noise.** Wireless facilities, including all accessory and transmission equipment, must comply with all noise requirements in Belvedere Municipal Code Chapter 8.10.
(5) **Landscaping.** Wireless facilities must include a complete landscape plan when proposed in a landscaped area. The landscape plan must include existing vegetation, vegetation proposed to be removed or trimmed, and identify proposed landscaping by species, size, and location. The City may require additional landscaping to screen the wireless facility from view, avoid or mitigate potential adverse impacts on adjacent properties, or otherwise enhance the concealment of the wireless facility. The City

may also require a tree protection plan.

(6) **Site Security Measures.** Wireless facilities may incorporate reasonable site security measures, such as fences, walls, and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. Site security measures must be designed to enhance concealment to the maximum extent possible.

(7) **Backup Power Sources.** The City may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly discourages backup power sources mounted on the ground or on poles within a public right-of-way. The City shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the City may approve sockets or other connections used for temporary backup generators.

(8) **Lights**. Wireless facilities may not include exterior lights other than as may be required under law, or timed or motion-sensitive lights for security and/or safety as determined necessary or desirable by the City. All lights must be installed in locations and/or within enclosures that mitigate light impacts on other properties to the maximum extent possible.

(9) **Signage.** Wireless facilities must include signage that accurately identifies the equipment owner/operator, its site name or identification number, and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless approved by the City or required by law.

(10) **Future Colocations and Equipment.** To the extent feasible and aesthetically appropriate, all new wireless facilities should be designed and sited in a manner that can accommodate potential future collocation and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance of the facility.

(11) **Utilities.** All cables and connectors for telephone, primary electric, and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Meters, panels, disconnect switches, and other associated improvements must be placed underground to the extent possible or placed inconspicuous and concealed locations.

(12) **Parking.** The installation of wireless facilities shall not interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number required for the property.

B. Freestanding Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed freestanding wireless facilities not covered under Section 6409 must conform to the requirements in this subsection.

(1) **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) must be mounted directly behind the antennas to the

maximum extent feasible.

(2) **Ground-Mounted Equipment, Shelters**. All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, or other enclosures subject to the City's prior approval. The City may require additional concealment elements as necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

(3) **Monopoles**. The City shall not approve any unconcealed monopoles on private property within the City.

C. Building-Mounted Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed building-mounted wireless facilities not covered under Section 6409 must conform to the requirements in this subsection.

(1) **Preferred Concealment Techniques.** To the extent feasible, building-mounted wireless facilities should be completely concealed and architecturally integrated into the existing façade or rooftop feature with no visible impacts (examples include, but are not limited to, antennas behind existing walls or façades replaced with radio frequency-transparent material finished to mimic the replaced materials). Alternatively, when integration within existing building features is not feasible, the wireless facility should be completely concealed in a new structure designed to mimic the original architecture (examples include, but are not limited to, cupolas, steeples, and chimneys).

(2) **Façade-Mounted Equipment.** When wireless facilities cannot be placed behind existing walls or other existing screening elements, the City may approve façade-mounted equipment in accordance with this subsection. All façade-mounted equipment must be concealed behind screen walls and mounted as flush to the façade as practicable. The City may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building. The City may not approve any exposed façade-mounted antennas, including but not limited to, exposed antennas painted to match the façade. To the extent feasible, façade-mounted equipment must be installed on the façade along the building frontage that is the least publicly visible.

(3) **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style, and finish.

(4) **Ground-Mounted Equipment, Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, or other enclosures subject to the City's prior approval. The City may require additional concealment elements as necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

D. Right-of-Way Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed wireless facilities in a public right-of-way not covered under Section 6409 must conform to the requirements in this subsection.

(1) **Concealment.** Wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment, and adjacent uses. Wireless facilities in the right-of-way may not unreasonably obstruct, impede, inconvenience, or hinder the public use.

(2) **Support Structures**. Wireless facilities in the right-of-way must be installed on existing above-ground structures (such as light poles) whenever possible and aesthetically desirable. The City shall not approve any new, non-replacement support structure unless there are no potentially available above-ground support structures near the site, or the City finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with this Policy.

(3) **Undergrounded Equipment.** All equipment, other than the antenna and any electric meter, must be installed underground to the extent feasible.

(4) **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as feasible. All pole-mounted equipment and required or permitted signage must face the street or otherwise be placed to minimize visibility from adjacent sidewalks and structures. All cables, wires, and other connectors must be routed through conduits within the pole whenever possible, and all external conduits, conduit attachments, cables, wires, and other connectors must be concealed from public view to the extent feasible.

15.9.13 ELIGIBLE FACILITIES REQUESTS

A. Purpose. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455(a)) generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove, or replace transmission equipment at an existing tower or base station.

B. Prior Approvals. Any eligible facilities request shall require an amendment to the underlying use permit for the tower or base station subject to the City's approval, conditional approval, or denial without prejudice pursuant to the standards and procedures contained in this subsection.

C. Other Permits and Regulatory Approvals. No eligible facilities request may be approved unless the applicant also obtains all other permits and regulatory approvals required by any other Federal, State, or local government. Any eligible facilities approval shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits and/or regulatory approvals.

D. Application Requirements

(1) **Application Required.** The City shall not approve any eligible facilities request except upon a duly filed application consistent with this subsection and any other written rules or policies the City may establish from time to time in any publicly-stated format.

(2) **Application Content.** All eligible facilities applications must include all information and materials required by the Director of Planning and Building. The City Council authorizes the Director of Planning and Building to develop, publish, and from time-to-time update or amend, eligible facilities application requirements, forms, checklists, informational handouts, and other related materials that the Director finds necessary, appropriate, or useful for the processing of any such application. All applications shall require that the applicant demonstrate that the proposed project will comply with all applicable health and safety laws, regulations, or other rules, which includes without limitation building codes, electrical codes, and all FCC rules for exposure to radio frequency emissions.

(3) **Procedures for a Duly Filed Eligible Facilities Application.** Any eligible facilities application will not be considered duly filed unless submitted in accordance with the procedures in this subsection.

(a) **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director of Planning, which the Director shall schedule within a reasonable time from the applicant's scheduling request. The pre-submittal conference is intended to streamline the review process through discussion that includes without limitation, the appropriate project classification, including whether the project qualifies under Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); and any application completeness issues. To mitigate any unnecessary delays due to application incompleteness applicants are encouraged to bring any draft applications or other materials so that City staff may provide informal feedback and guidance regarding whether such applications or other materials may be incomplete or otherwise unacceptable.

(b) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant's scheduling request. Any application received without an appointment, whether delivered in-person, by mail, or through any other means, shall not be considered duly submitted.

(4) **Applications Deemed Withdrawn.** Any application for an eligible facilities request will be automatically deemed withdrawn if the applicant fails to substantively respond to the City within 90 calendar days after the City determines in writing that an application is incomplete. The Director of Planning and Building may, in her/his reasonable discretion, grant a written extension for up to an additional 30 calendar days.

(5) **Peer and Independent Consultant Review.**

(a) **Authorization and Scope.** The City Council authorizes the Director of Planning and Building, in her/his discretion, to select and retain an independent consultant(s) in connection with

application for an eligible facilities request. The Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities including without limitation permit application completeness or accuracy; pre-construction planned compliance with applicable regulations for exposure to radio frequency emissions; post-construction actual compliance with applicable regulations to radio frequency emissions; whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; the applicability, reliability, and/or sufficiency of any information, analyses, or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and any other issued by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public hearings, and/or attend meetings with City staff and/or the applicant.

(b) **Consultant Fees; Deposits.** If the Director of Planning and Building elects to retain an independent consultant(s) in connection with any application the applicant shall pay the reasonable costs in connection with the services provided. Before the independent consultant(s) may perform any services, the applicant shall deposit with the City an amount equal to the estimated costs for the services to be rendered as determined by the Director. If the deposit exceeds the total costs for consultant services, the Director shall promptly return any unused funds after the wireless facility has received final City inspection. If the reasonable costs for consultant services exceeds the deposit, the Director shall invoice the applicant for the balance which shall be promptly paid by the applicant. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

E. Decisions and Appeals.

(1) **Administrative Review**. The Director of Planning and Building shall administratively review a complete and duly filed eligible facilities request application and shall act upon such application ministerially without prior notice or a public hearing.

(2) **Decision Notices.** Within 5 days after the Director of Planning and Building acts on an eligible facilities request application or before the FCC shot clock expires, whichever occurs first, the Director shall send a written notice to the applicant of the decision. If the Director denies the application, the notice must contain: the reasons for the decision; a statement that denial is without prejudice; and instructions for how and when to file an appeal.

(3) **Eligible Facilities Findings.** The Director of Planning and Building may

approve or conditionally approve an eligible facilities request application when she/he finds that the proposed project:

(a) Involves collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station; and

(b) Does not substantially change the physical dimensions of the existing wireless tower or base station.

F. Criteria for Denial Without Prejudice. Notwithstanding any other provision of this subsection and consistent with all applicable Federal laws and regulations, the Director of Planning and Building may deny without prejudice any eligible facilities request application when the Director finds that the proposed project:

(1) Does not meet the eligible facilities findings;

(2) Involves the replacement of the entire support structure; or

(3) Violates any legally enforceable law, regulation, rule, standard, or permit condition reasonably related to the public health and safety.

G. Conditional Approvals. Subject to any applicable limitations in Federal or State law, nothing in this subsection is intended to limit the Director of Planning and Building's authority to conditionally approve an eligible facilities request application to protect and promote the public health and safety.

H. Appeals. Any applicant may appeal the decision of the Director of Planning and Building to deny without prejudice an eligible facilities request application. A written appeal together with any applicable appeal fee as established by the City council must be tendered to the City within 10 days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall be the appellate authority for all appeals of the Director's written decision. The City Manager shall review the application de novo; provided however that the City Manager's decision shall be limited only to whether the application should be approved or denied pursuant to the provisions in this subsection and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to further administrative appeal.

I. Standard Conditions of Approval. In addition to all other conditions adopted by the City, all approved eligible facilities requests, whether approved by the City or deemed approved by operation of law, shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary.

(1) **Permit Term.** An approved eligible facilities request, whether by the City's approval or operation of law, constitutes a Federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. Such approval shall not extend the permit term, if any, for any conditional use permit or other underlying prior regulatory authorization. Accordingly, an eligible facilities request approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.

(2) **Accelerated Termination Due to Invalidation.** In the event that a court

of competent jurisdiction invalidates all or any portion of an eligible facilities request approval or any FCC rule that interprets Section 6409 such that Federal law would not mandate approval, such approval shall automatically expire 1 year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of a previously approved eligible facilities approval or the Director of Planning and Building grants an extension upon a written request that shows good cause for the extension, including without limitation extreme financial hardship. The Director may not grant a permanent or indefinite extension. The permittee shall not be required to remove its improvements under the invalidated eligible facilities approval if it obtains the applicable permits(s) or submitted an application for such permit(s) before the 1-year period ends.

(3) **Reservation of Standing.** The City's grant or grant by operation of law of eligible facilities approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409, or any section of an eligible facilities approval.

(4) **Strict Compliance with Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must include the eligible facilities request approval, all associated conditions, and the approved photo simulations into the project plans (the "Approved Plans"). The permittee must construct, install, and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications, or other changes to the Approved Plans, whether requested by the permittee or by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director of Planning and Building's prior review and approval, who may refer the request to the Planning Commission in her/his discretion. The permittee shall submit an as-built drawing within 90 days after installation of the wireless facility. The Director may revoke the eligible facilities request approval if she/he finds that the requested alteration, modification, or other change may cause a substantial change to the project.

(5) **Build Out Period.** The eligible facilities request approval will automatically expire 1 year from the approval or deemed-approved date unless the permittee obtains all other permits and approvals required to install, construct, and/or operate the approved wireless facility, which includes any permits or approvals required by Federal, State, or local public agencies with jurisdiction over the property, the wireless facility, or its use. The Director of Planning and Building may grant one written extension to a date certain, not to exceed 1 additional year, if the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

(6) **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

according to the Approved Plans and all conditions in the eligible facilities approval. The permittee shall keep the site area free from litter and debris at all times and shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware of such graffiti or vandalism, at no cost to the City.

(7) **Compliance with Laws.** The permittee shall maintain compliance at all times with all Federal, State, and local statute, regulations, orders, or other rules that carry the force of law (the "Laws") applicable to the permittee, the subject property, the wireless facility, or any use or activity in connection with the use authorized in the eligible facilities request approval, which includes without limitation any Laws applicable to human exposure to radio frequency emissions. The permittee expressly acknowledges and agrees that this condition is intended to be broadly construed and that no other specific requirement in these conditions are intended to reduce, relieve, or otherwise lessen the permittee's obligations to comply with all Laws.

(8) **Radio Frequency Compliance.** If the Director of Planning and Building determines that there is good cause to believe that the wireless facility may emit radio frequency emissions in excess of FCC standards, the permittee shall cooperate with the City to determine if the wireless facility is in compliance with all FCC rules regarding human exposure to radio frequency emissions including, but not limited to submittal of an affidavit signed by a radio frequency engineer certifying the wireless facility's compliance with FCC rules; providing technical data such as the frequencies in use, power output levels and antenna specifications, necessary to evaluate compliance with FCC radio frequency limitations; and all other actions deemed necessary to measure compliance.

(9) **Adverse Impacts on Other Properties.** The permittee shall avoid undue or unnecessary adverse impacts on nearby properties that arise from the construction, installation, operation, modification, maintenance, repair, removal, and/or other activities at the site. The permittee perform work that involves heavy equipment or machinery except during normal construction work hours as authorized by the City, excepting work required to prevent immediate harm to persons or property. The City may issue a stop work order for any activity that violates this condition.

(10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that City representatives may enter the site and inspect the improvement and equipment thereon upon reasonable prior notice; provided however, that City representatives may, but will not be obligated to, enter the site area without prior notice in the event of an emergency or when the equipment threatens imminent harm to persons or property.

(11) **Contact Information.** The permittee shall submit and maintain current basic contact and site information to the City, and shall notify the City of any changes to this information within 7 days of any change. This information includes but is not limited to: the name, address, email address, and 24-hour contact telephone number of the permittee, the owner, operator, and person responsible for maintenance of the wireless

facility; and legal status of the owner of the wireless facility including official identification numbers and FCC certification.

(12) **Performance Bond.** Prior to the issuance of a building permit in connection with an eligible facilities request approval, the permittee shall post a performance bond from a surety and in a form acceptable to the Director of Planning and Building in an amount reasonably necessary to cover the cost to remove all improvements and equipment, and restore all affected areas, based on a written estimate from a qualified contractor with experience in wireless facilities removal.

(13) **Defend, Indemnify, Hold Harmless.** The permittee shall defend with counsel acceptable to the City in its discretion, indemnify, protect, and hold harmless the City, elected and appointed officials, representatives, officers, and/or employees, from and against any and all claims, actions, or proceedings against the City, its elected and appointed officials, representatives, officers, and/or employees to attack, set aside, void, or annul an eligible facilities request approval, the wireless facility itself, or any related items or actions. Such indemnification shall include any and all liability damages, judgments, settlements, penalties, fines, and all defense costs including but not limited to attorneys' fees, expert witness fees, and any liability of any kind related to or arising from such claim, action, or proceeding. Nothing contained herein shall prohibit the City from participating in a defense of any claim, action, or proceeding.

(14) **Successors.** All conditions of approval shall be binding to the permittee and all successors in interest to the permittee

(15) **Signage.** All notices and signs required by the FCC and California Public Utilities Commission, and approved by the City, shall be posted on the site and include the permittee's emergency contact name and 24-hour telephone number.

15.9.14 CESSATION OF USE OR ABANDONMENT

A. A wireless facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunication services for 90 or more consecutive days.

B. The operator of a wireless facility shall notify the City in writing of its intent to abandon or cease use within 10 days of abandoning or ceasing use. Notwithstanding any other provisions herein, the operator of the wireless facility shall provide written notice to the City of any discontinuation of operation of 30 days or more.

C. Failure to inform the City of a discontinuation of operations required by this subsection shall constitute a violation of any approvals and the grounds for: revocation or modification of the permit; calling of any bond or other assurance or condition of approval; removal of the wireless facility pursuant to a nuisance abatement action; and any other remedies allowed by law.

15.9.15 REMOVAL AND RESTORATION, PERMIT EXPIRATION, REVOCATION OR ABANDONMENT

A. Removal Obligation. Upon the expiration of a permit, including any extensions, earlier termination, or revocation of the permit, or abandonment of the facility, the permitee, owner, or operator shall remove the wireless facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be pursuant to proper health and safety requirements and all requirements of the City. The facility shall be removed from the property within 30 days at no cost to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration under this subsection.

B. Failure to Remove. Failure of the permitee, owner, or operator to promptly remove its facility and restore the property within 30 days after the expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the Belvedere Municipal Code and grounds for: calling of any bond or other assurance or condition of approval; removal of the facility pursuant to a nuisance abatement action; and any other remedies allowed by law.

	CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL **POLICY 15.10** **REAR YARD SETBACKS IN R-1L ZONING**		
Adoption Date:	6/14/2021	**Adopted by:**	City Council Resolution No. 2021-14
Revised Date:	--	**Revised by:**	-
Authority:	City Council		

15.10.1 BACKGROUND

On May 18, 2021, the Planning Commission reviewed Belvedere Municipal Code Section 19.48.010 "Yard and setbacks-Requirements generally," which describes how setbacks are measured in all zones, however the Planning Commission reviews 19.48.010 (D) which specifically describes how rear and side yard setbacks are measured in the R-1L Zoning.

The policy addressed a possible unintended consequence of the definition that could allow homeowners to create a larger buildable envelope.

15.10.2 INTERPRETATION OF 19.48.010 (D)

19.48.010 (D)

In the R-1L zone, when a rear or side property line is located in the water, setbacks shall be measured from and parallel to the edge of the water as measured at summer-level high tide. (Ord. 2016-4 § 3 (part), 2016; Ord. 2013-2 § 24 (part), 2013; Ord. 92-8 § 6, 1992; Ord. 89-1 § 1 (part), 1989.)

Based on the definition above, the summer level high tide water lines in the lagoon are determined by either by bulkhead, beach, or rip rap.

In order to prevent the arbitrary expansion of an R-1L buildable lot area by changing the location of the water/land interface this policy seeks to provide clarity for City Staff and Commissioners. The intention of this policy amendment is to prevent homeowners from applying to move their bulkhead, beach, or rip rap (summer level high tide water line) to create a larger buildable envelope, should their property line extend beyond the summer level high tide water line. In some instances, in the lagoon, property lines extend beyond the bulkhead, beach, or rip rap. The goal of this policy is that the existing summer level high tide water line remain in its present location, thereby "fixing" the setback location, as is the case for all other properties in Belvedere. Should a project come in for review, the summer level high tide water line shall not be changed, whether defined by bulkhead, beach or rip rap.

All proposed bulkheads, for repair and/or new construction, shall be located in the same location as existing bulkheads. In cases where no bulkhead exists, the proposed bulkhead must be located at the summer level high tide water line as it makes contact with dryland.