

Council Policy Statement

Category: WIRELESS COMMUNICATION FACILITIES
Specific Subject: Review and Operation Guidelines for Wireless Communication Facilities

PURPOSE:

Wireless communication facilities, or WCFs, refer to the many facilities with antennas and supporting equipment that receive and transmit signals and together enable mobile or other “wire-free” communication and information services. Unlike wireline communications, such as the land-based telephone system, wireless communication technologies, by their operational nature, require a network of antennas mounted at various heights and attached typically to buildings, structures and poles. A common name for a WCF is “cell site.”

WCF proposals to the city became commonplace in the mid-1990s. Since then, Carlsbad has processed dozens of new WCF applications and numerous permit renewals for existing facilities, all without benefit of specific review criteria. As the city’s population and the popularity and variety of wireless services grow, providers are expected to install more facilities to improve coverage and gain user capacity.

The following Review and Operation Guidelines (Guidelines) have been developed to supplement and clarify the requirements of Carlsbad Municipal and Zoning codes, including chapter 21.42 of the Carlsbad Zoning Code. These requirements are meant to provide a general overview of the procedures and requirements for installation of WCFs, while accommodating and supporting deployment of WCFs to provide adequate coverage and capacity throughout the city. They also outline definitions that are quantifiable and measurable and detail development standards and design requirements which the city will use to review proposed facilities. This policy’s purpose is to guide the public, applicants, boards and commissions, and staff in reviewing the placement, construction, and modification of WCFs. The goal is to assure WCFs in Carlsbad:

- Are reviewed and provided within the parameters of law.
- Protect the health, safety, and welfare of the public to the extent permitted by applicable laws.
- Are encouraged to locate away from residential and other sensitive areas, except as allowed by Sections A, B and C of this policy.
- Represent the fewest possible facilities necessary to complete a network without discriminating against providers of functionally equivalent services or prohibiting the provision of wireless services.
- Use, as much as possible, “stealth” techniques so they are not seen or easily noticed.
- Operate consistent with Carlsbad’s quality of life.

This policy applies to all commercial providers of wireless communication services. It does not apply to amateur (HAM) radio antennas, dish antennas, collocations and/or modifications covered under Federal Communications Commission (FCC) regulations at 47 C.F.R. §§ 1.6100 *et seq.* (implementing Section 6409(a) of the Spectrum Act (codified as 47 C.F.R. § 1455(a)) for non-substantial modifications to existing wireless towers and base stations)¹ and other antennas installed on a residence for an individual's private use.

The Guidelines shall not relieve a person from the responsibility of complying with all other applicable regulations of any other local, state, or federal agencies. These Guidelines supplement existing regulations and provide clear standards and guidelines for all wireless infrastructure deployments unless specifically prohibited by applicable law. The standards and procedures contained in these Guidelines are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the city's local values. Except as expressly provided otherwise, these Guidelines shall be applicable to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, replace, relocate or otherwise deploy WCFs, inclusive of applications which affect existing facilities.

These Guidelines are also intended to establish clear procedures for application intake and completeness review. Conditional use permit applications for WCFs that were denied shall follow the process in Carlsbad Municipal Code Section 21.54.130 for reapplication of a new CUP. Building permit and ROW permit applications for facilities that were denied may be submitted to the Community Development Department as new applications at any time, without prejudice. Said new application will be processed as a completely separate application, with new submittal materials and fees required, and shall demonstrate compliance with these Guidelines.

BACKGROUND:

To secure the right to provide personal wireless services to a region, companies often must obtain airwave licenses that are auctioned by the FCC, the federal agency that regulates the communications industry. For radio services that use license spectrum, the FCC mandates the licensees establish their service networks as quickly as possible.

In Carlsbad, there are three common types of WCF systems: Cellular, PCS (Personal Communications Services), and ESMR (Enhanced Specialized Mobile Radio).

POLICY:

REVIEW RESTRICTIONS:

The Federal Telecommunications Act of 1996 (TCA) preserves the city's ability to regulate the placement, construction, and modification of wireless communication facilities subject to the following restrictions.

¹ If the city determines that an application submitted for approval pursuant to Section 6409(a) is, in fact, not covered by the applicable federal regulations, the applicant may resubmit the request for approval pursuant to the applicable provisions in this policy.

- ***The city may not favor any carrier.***
Regulations may not unreasonably discriminate among functionally equivalent service providers. A “functionally equivalent provider” means a competitor.
- ***The city may not prevent completion of a network.***
Regulations may not prohibit or have the effect of prohibiting the provision of personal wireless services. According to the FCC’s recent order in 2018, the denial of a single permit application may cause an effective prohibition if it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, 33 FCC Rcd. 9088 at ¶ 37 (2018) (*Small Cell Order*). In addition, local aesthetic requirements may be prohibitory unless they are reasonable and published in advance. *Small Cell Order* at ¶ 40, *rev’d in part, City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).
- ***Applications are to be processed in a reasonable time.***
A city must act on an application for WCFs within a “reasonable” amount of time, which the FCC generally defines as either 60, 90, or 150 days from the time an application is submitted and depending on the nature and scope of the proposed wireless facility.
- ***Failure to approve or deny applications may result in automatic approvals and court orders.***
Under California Government Code 65964.1, an application for a wireless facility may be “deemed approved” if a city or county fails to act within the presumptively reasonable timeframes established by the FCC. This provision contains some exceptions but generally applies to new facilities and very large modifications to existing facilities both on private property and in the public rights-of-way. The FCC’s regulations contain a similar “deemed granted” remedy for less-than substantial collocations and modifications to existing facilities. In addition, the *Small Cell Order* establishes that a permitting agency’s failure to act within the referenced timeframes will amount to a presumptive prohibition on the provision of personal wireless services, the remedy for which may be a court injunction.
- ***The city cannot deny an application because of perceived radio frequency health hazards.***
If federal standards are met, cities may not deny permits on the grounds that radio frequency emissions (RF) are harmful to the environment or to the health of residents. However, local governments may require wireless carriers to prove compliance with the standards. The FCC has established procedures to enforce compliance with its rules.
- ***The city cannot deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station (Section 6409(a) non-substantial modifications).***
The FCC promulgated detailed regulations for this restriction, including a definition for “substantial change” and procedural rules for processing these applications, which can be found at 47 C.F.R. §§ 1.6100 *et seq.*
- ***Certain collocation facilities are not subject to discretionary permit requirements.***
Under California Government Code section 65850.6, a collocation facility (where two or more wireless operators have located their antennas at a common location) shall be a permitted use not subject to discretionary permit requirements if it satisfies the requirements of that statute.
- ***A decision to deny an application must be supported by substantial evidence.***
A decision to deny a WCF application must be in writing and supported by substantial evidence contained in a written record. The reasons for the denial must also be contained in a written record contemporaneously available with the written denial notice and must be clear enough to enable judicial review.

HEALTH CONCERNS & SAFEGUARDS:

Possible health risks from exposure to the RF electromagnetic fields generated by WCFs are a significant community concern. Accordingly, the FCC requires facilities to comply with RF exposure guidelines published in the Code of Federal Regulations (see 47 CFR § 1.1307 and 47 CFR §1.1310). The limits of exposure established by the guidelines are designed to protect the public health with a very large margin of safety as they are approximately 50 times below the levels that generally are accepted as having the potential to cause a measurable change in human physiology. Both the Environmental Protection Agency and Food and Drug Administration have endorsed the FCC’s exposure limits, and courts have upheld the FCC rules requiring compliance with the limits.

Most WCFs create maximum exposures that are only a small fraction of the limits. Furthermore, because the antennas in a PCS, cellular, or other wireless network operate more efficiently when in a line of sight arrangement to effectively transmit, their power is focused on the horizon instead of toward the sky or ground. Generally, unless a person is physically next to and at the same height as an antenna, it is not possible to be exposed to RF emissions that exceed the maximum permissible exposure.

The FCC requires providers, upon license application, renewal, or modification, to demonstrate compliance with RF exposure guidelines. Where two or more wireless operators have located their antennas at a common location (called “collocation”), the total exposure from all antennas taken together must be within FCC guidelines. Many facilities are exempt from routine e compliance demonstrations under FCC guidelines, however, because their low power generation or height above ground level is highly unlikely to cause exposures that exceed the guidelines in areas accessible by people.

PERMIT PROCESS:

Wireless communication facilities (WCFs) are defined in Carlsbad Municipal Code Section 21.04.379. Carlsbad Municipal Code Section 21.42.140(B)(165) allows WCFs in all zones with the approval of a minor conditional use permit (MCUP) or a conditional use permit (CUP) and subject to this policy. New WCFs are allowed in the public right-of-way of roads (ROW) subject to the requirements of this policy and the processing requirements of Table A below.

Small wireless facilities (SWFs) are WCFs that also meet the definition in FCC regulations at 47 C.F.R. §§ 1.6002(l).

For WCFs and SWFs to be located in the public right-of-way of roads, which generally is not zoned, a right-of-way permit pursuant to Title 11 of the Carlsbad Municipal Code may be used as outlined in Table A – WCF and SWF Processing Requirements.

Table A – WCF and SWF Processing Requirements

Category	Code reference/ definition	Application Review Process		Coastal Zone and Coastal Development Permit (CDP) requirements	Applicable Policy 64 Guidelines
New WCFs on public or private property	Carlsbad Municipal Code (CMC) Section 21.04.379	CUP or Minor CUP ¹		CDP or Minor CDP required per CMC Chap. 21.201 unless specifically exempted	A, B, D, and E
New WCFs in the public right-of-way of roads	CMC Section 21.04.379	ROW permit ² , Minor CUP ³ or CUP ⁴		Exempt per CMC Section 21.201.B.11 ⁵	A, B, D and E
Existing WCF – Section 6409(a) eligible facilities request	CMC Section 21.04.379 and 47 U.S.C. § 1455(a)	Section 6409(a) worksheets		Exempt per CMC Section 21.201.B.11 ⁵	N/A – Policy 64 does not apply
Existing WCF – Emergency Generators	CMC Section 21.04.379 and Government Code Section 65850.75	Building Permit		Exempt per CMC Section 21.201.B.11 ⁵	N/A – Policy 64 does not apply
Small Wireless Facilities (SWF)	CMC Section 21.04.379 and the definition in FCC regulations at 47 C.F.R. § 1.6002(l)	Within the public right-of-way of roads:	Right-of-way Permit	Exempt per CMC Section 21.201.B.11 ⁵	C, D, and E
		Outside the public right-of-way of roads:	MCUP	Minor CDP required per CMC Chap. 21.201 unless specifically exempted ⁵	B, C, D, and E

Notes:

1. These guidelines apply in the review of CUPs or Minor CUPs for new WCFs.
2. A right of way permit shall be required instead of a CUP for a WCF that is (i) to be located on an existing or replacement pole, (ii) is consistent with the preferred locations in Location Guideline A.1 (or if in a discouraged location in Location Guideline A.2, has all equipment underground), and (iii) is consistent with Design Guidelines for WCFs in the Public Right-of-Way C
3. A minor CUP by Process 1 shall be required for a WCF that is (i) to be located on an existing or replacement pole, (ii) is in a discouraged location in Section A with above-ground equipment, and (iii) is consistent with Design Guidelines for WCFs in the Public Right-of-Way C
4. A CUP by Process 2 shall be required for all other WCFs not meeting the criteria for approval subject to a right of way permit or a minor CUP by process 1
5. When located within the city’s jurisdiction of the Coastal Zone.

REVIEW AND APPROVAL GUIDELINES

A. *Location Guidelines for Placement of WCFs (excluding SWFs)*

1. *Preferred Locations* – WCFs are encouraged to locate on existing buildings and structures. In addition, WCFs should be located in the following zones and areas, which are listed in order of descending preference:
 - a. Industrial zones.
 - b. Commercial zones.
 - c. Other non-residential zones, except open space.
 - d. Public right-of-way of roads adjacent to industrial and commercial zones and identified on the map attached as Exhibit A.
 - e. Public property (e.g., city facilities) not in residential areas.
 - f. Major power transmission towers in non-residential zones or areas.
 - g. Public and private utility installations (not publicly accessible) in residential and open space zones (e.g., water tanks, reservoirs, or the existing communication towers near Maerke Reservoir).
 - h. Parks and community facilities (e.g., places of worship, community centers) in residential zones or areas.
 - i. Public right-of-way of roads adjacent to residential zones and identified on the map attached as Exhibit A.

2. *Discouraged Locations* – WCFs should not locate in any of the following zones or areas unless the applicant demonstrates that alternatives in more-preferred locations are not technically feasible or potentially available as required by Application and Review Guideline E.3.
 - a. Open space zones and lots (except as noted in Location Guideline A.1.).
 - b. Residential zones or areas (except as noted in Location Guideline A.1.).
 - c. Major power transmission towers in corridors located in/or next to a residential zone or area.
 - d. Environmentally sensitive habitat.
 - e. Public right-of-way of roads not identified on the map attached as Exhibit A.
 - f. On vacant land.

3. *Visibility to the Public* – In all areas, WCFs should be located where least visible to the public and where least disruptive to the appearance of the host property. Furthermore, no WCF should be installed on an exposed ridgeline or in a location readily visible from a public place, recreation area, scenic area or residential area unless it is satisfactorily located and/or screened so it is hidden or disguised.

4. *Collocation* – Collocating with existing or other planned wireless communication facilities is recommended whenever feasible and appropriate. Service providers are also encouraged to collocate with water tanks, major power transmission and distribution towers, and other utility structures when in compliance with these guidelines. The city must approve collocation applications unless the expansion adds significantly to the height or width of a facility.

5. *Monopoles* – No new ground-mounted WCF monopoles should be permitted unless the applicant demonstrates no existing monopole, building, or structure can accommodate the applicant’s proposed antenna as required by Application and Review Guideline E.4.

B. *Design Guidelines for WCFs and SWFs Outside the Public Right-Of-Way of Roads*

1. *Stealth Design* – All aspects of WCFs and SWFs, including the supports, antennas, screening methods, and equipment should exhibit “stealth” design techniques so they visually blend into the background or the surface on which they are mounted. Subject to city approval, developers should use false architectural elements (e.g., cupolas, bell towers, dormers, and chimneys), architectural treatments (e.g., colors, textures and materials), elements replicating natural features (e.g., trees and rocks), landscaping, and other creative means to hide or disguise the facilities. Stealth can also refer to facilities completely hidden by existing improvements, such as parapet walls.
2. *Equipment* – Equipment should be located within existing buildings to the extent feasible. If equipment must be located outside, it should be screened with walls and plants. If small outbuildings or extensions to existing structures are constructed specifically to house equipment, they should be designed and treated to match nearby architecture or the surrounding landscape.
3. *Collocation* – Whenever feasible and appropriate, design and placement should promote and enable collocation.
4. *Height* – facilities should adhere to the existing height limitations of the zone in which they are located. When installed on an existing structure, new facilities and collocations should not exceed the height of the existing/replacement structure on which they are being installed.
5. *Setbacks* – WCFs and SWFs, including all equipment and improvements, should adhere to the building setback requirements of the zone in which they are located, with the following clarifications:
 - a. If on a site next to a residential zone, a setback should be maintained from the residential zone boundary a minimum distance equal to the above-ground height of the overall support structure’s height.
 - b. If in a residential zone and in a public utility installation, park, or community facility, a setback should be maintained from the property boundaries of the utility installation, park, or community facility a minimum distance equal to the above-ground height of the overall support structure’s height.
 - c. The decision-maker for WCFs may decrease or increase these setbacks if it finds such changes would improve the overall compatibility of the WCF based on the factors contained in Application and Review Guideline E.4.
6. *Building or Structure-Mounted WCFs and SWFs* –
 - a. Antennas and their associated mountings should generally not project outward more than 24 inches from the face of the building.
 - b. Roof-mounted antennas should be located as far away as possible from the outer edge of a building or structure and should not be placed on roof peaks.

- c. If permitted, WCFs and SWFs on residential buildings should only be allowed if disguised as a typical residential feature (e.g., a chimney, a dormer) and if all equipment is located inside, not outside, the building.
7. *Ground-mounted Monopole WCFs –*
- a. All antennas should be mounted as close as possible to the monopole to improve facility appearance.
 - b. The placement, screening, and disguise of the monopole should fit with the surrounding site design, architecture, and landscaping. Tree disguises, such as a “mono-palm,” may be acceptable depending on their quality and compatibility with landscaping nearby.
 - c. Landscaping should be provided as necessary to screen, complement, or add realism to a monopole. Landscaping should include mature shrubs and trees. Some of the trees should be tall enough to screen at least three-quarters of the height of the monopole at the time of planting. Sometimes, landscaping may not be needed because of the monopole’s location or vegetation already nearby.
 - d. When possible and in compliance with these guidelines, monopoles should be placed next to tall buildings, structures, or tall trees.
8. Pole mounted SWFs shall comply with the Design Guidelines in section C.2 of this policy as applicable, including height limits.
9. *Lattice Towers –* New lattice towers should not be permitted in the city. On existing lattice towers:
- a. All antennas should be mounted as close as possible to the tower so they are less noticeable, and should match the color of the tower.
 - b. Wiring must be concealed in conduit that is flush-mounted to the tower. The conduit and mounting hardware shall match the color of the tower.
 - c. Non-antenna equipment mounted on the tower should be placed behind the antennas to conceal them from view, and should be enclosed in a cabinet that matches the color and finish of the structures on which they are mounted. Ground mounted equipment shall comply with B.2 above.
10. *Undergrounding –* All utilities should be placed underground.
11. *Regulatory Compliance –* WCFs should comply with all FCC, FAA (Federal Aviation Administration), CPUC (California Public Utilities Commission) and local zoning and building code requirements.

C. *Design Guidelines for WCFs and SWFs in the Public Right-of-Way of Roads*

The general intent of these design and development standards is to preserve the character of the city’s neighborhoods and corridors by requiring WCFs and SWFs to utilize the least intrusive design available with regard to appearance, size, and location, and to blend into the existing streetscape as much as possible. They also seek to prevent conflict with existing and planned roadway, utility, and storm drain improvements.

- 1. *Support pole installation preferences for the right-of-way of roads*

- a. The city prefers WCFs and SWFs to be installed on support poles in the public rights-of-way of roads, ordered from most preferred to least preferred, as follows:
 - (1) Existing or replacement streetlight poles.
 - (2) Existing or replacement wood utility poles.
 - (3) Existing or replacement traffic signal poles.
 - (4) New, non-replacement streetlight poles.
 - (5) New, non-replacement poles (not wood).
 - b. The city prohibits WCFs and SWFs facilities to be installed on the following support poles or structures:
 - (1) Signs.
 - (2) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small wireless facility application.
 - (3) New, non-replacement wood poles.
 - (4) Pieces of public art, structures placed in the in the right-of-way through charitable donations, commemorative memorial structures or archways over roads and pedestrian walkways, or other similar structures as determined by the engineering manager.
 - c. The engineering manager shall determine whether an application for a WCF or SWF utilizes the least intrusive design available or if there is a more preferred support pole type within 500 feet of the proposed location. For purposes of these guidelines, least intrusive design available means the most preferred design or development standard as provided in these Guidelines that is technically feasible. For individual antennas, shrouds/radomes, accessory equipment, mounting brackets/attachments and any other physical aspect of a facility, the city strongly prefers the smallest such item that is technically feasible. If the application does not propose the least intrusive design, or if there is a more preferred support pole within 500 feet, the application shall provide written evidence of the following:
 - (1) A clearly defined technical service objective
 - (2) A technical analysis that includes the factual reasons why the least intrusive design or a more preferred support pole type within 500 feet of the proposed location is not technically feasible.
2. *Requirements applicable to all WCFs and SWFs in the public right-of-way of roads –*
- a. Overall height. WCFs and SWFs mounted to existing poles shall not exceed the height of a support pole by more than five feet measured from the top of the pole, except as necessary to comply with CPUC General Order 95 relating to utility poles. Replacement poles and new non-replacement poles shall not exceed the city height standards for streetlight poles or traffic signal poles, as applicable, by more than ten percent, plus five feet for the antenna. Replacement utility poles shall not exceed ten percent of the height of the existing utility pole, plus five feet for the antenna.
 - b. Antenna stealth/concealment. The antenna(s) associated with the installation shall be stealth to the maximum extent feasible and concealed with a radome(s), shroud(s) or other cover(s) that also conceals the cable connections, antenna mount, and other hardware. The radome, shroud or other cover must be a flat, non-reflective color to match the underlying support structure.

- c. Antenna size.
 - (1) Each antenna shall not exceed 3 cubic feet in volume.
 - (2) Top-mount antennas (including the shroud) shall be no more than 16 inches wide when placed on light poles, and shall not exceed the width of any wooden utility pole on which they are mounted.
 - (3) Any top-mounted antennas which are wider than the light pole on which they are mounted shall be tapered to match the width of the pole at the point of attachment to the pole.
- d. Equipment location. Accessory equipment may be both pole mounted and non-pole mounted. Pole mounted limits are described in Section C.2.e , the balance located according to the following preference: (1) underground, (2) above ground and screened consistent with Section C.2.f. The city’s preferences is for non-pole mounted equipment to be placed underground to the extent possible, unless the applicant demonstrates that it is technically infeasible or there are conflicts with other utilities, obstructions or it is otherwise not feasible, as determined by the engineering manager. If undergrounding is not feasible, the city prefers the equipment to be pole-mounted.
- e. Pole mounted equipment.
 - (1) Design and stealth/concealment. Accessory equipment must be stealth to the maximum extent feasible and/or concealed within a cabinet or shroud, and should be flush mounted and centered on the pole, except to the extent necessary to comply with CPUC General Order 95 for wood utility poles. The installation should be designed to minimize the overall visual profile, and installations that are partially or completely wrapped around the pole are encouraged. All equipment cabinets or shrouds shall be painted to match the color of the surface of the pole on which they are attached to reduce their visibility. Equipment may be installed behind street, traffic or other signs (between the pole and sign) to the extent that the installation complies with applicable regulations. All cables and conduits associated with the equipment shall be concealed from view within the same shroud or other cover and routed directly through the pole when feasible. Microwave or other wireless backhaul shall not have a separate and unconcealed antenna.
 - (2) Size limits. All non-antenna equipment mounted to the pole is included in the equipment volume limit. Electric meters and disconnect switches that are mounted on the pole are not included in the equipment volume limit. All pole mounted non-antenna equipment, including cabinets, shall not exceed:
 - (a). A width of 24 inches; and
 - (b). Nine (9) cubic feet in volume if installed within or adjacent to a residential district or within 500 feet from any structure approved for a residential use; or
 - (c). Seventeen (17) cubic feet in volume if installed within or adjacent to a non-residential district.
- f. Ground mounted equipment. If underground equipment is not feasible because there are conflicts with other utilities, obstructions or it is otherwise not technically feasible, as determined by the engineering manager per section (d) above, then all above ground equipment shall be: (1) placed in a ground-mounted

equipment shroud or cabinet that contains all equipment associated with the small wireless facility other than the antenna; and (2) set back at least 2.5 feet from the back of the curb and within the parkway or greenway or 2.5 feet back from the edge of the sidewalk when it is contiguous to the curb. All cables and conduits associated with the equipment shall be concealed from view, routed directly through the pole, and placed underground between the pole and the ground-mounted cabinet. All ground mounted equipment shall be stealth and/or screened completely, unless it is disguised to the satisfaction of the engineering manager. Volume limits for ground-mounted equipment shall be the same as applicable to pole-mounted equipment. The engineering manager may elect to waive volumetric limits for equipment that is installed or placed underground.

- g. All equipment associated with the WCF or SWF shall be located so as to avoid impacts to pedestrian access and vehicular site distance and safety. Pole mounted equipment should be mounted a minimum of eight feet above grade.
- h. To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled, or otherwise stored on the pole unless concealed within a cabinet.
- i. If the proposed WCF or SWF would damage or displace any street trees or trees on public property, the applicant shall comply with CMC Chapter 11.12 and City Council Policy No. 4 and will be responsible for planting replacement trees to the satisfaction of the Parks & Recreation Director or designee.
- j. If an applicant proposes to replace a streetlight pole, the replacement pole should be substantially similar to the existing pole and comply with city standards and specifications for streetlight poles.

3. *Supplemental requirements for WCFs and SWFs on New Poles for the right-of-way of roads –*

- a. All WCFs on new poles require a CUP by Process 2.
- b. Any new pole and/or equipment and other improvements associated with a new pole or an existing pole must be set back from intersections, alleys, and driveways and placed in locations where it will not obstruct motorists' sight lines or pedestrian access. In general, there is a presumption of no obstruction where a new pole and/or equipment is set back at least:
 - (1) A minimum of 50-feet from the extension of the curb of the intersecting street at intersections. Distances of less than 50-feet may be allowed through approval of the engineering manager and the city traffic engineer;
 - (2) Six feet from any driveway cut or alley entrance or exit;
 - (3) Six feet from any permanent object or existing lawfully-permitted encroachment in the public right-of-way, including without limitation bicycle racks, traffic signs and signals, trees, open tree wells, benches or other street furniture, streetlights, door swings, gate swings, or sidewalk café enclosures.
- c. The city may, in its discretion, require an additional setback for a specific pole when the city determines that the presumptively acceptable setback would obstruct motorists' sight lines or pedestrian access.
- d. The city may require the applicant to install a stealth pole, which may include without limitation functional streetlights and/or banners when technically

feasible and the city determines that such additions would enhance the overall appearance and usefulness of the new pole.

- e. The city will consider new pole designs proposed by an applicant if they meet the intent of this policy for stealth and attractive designs that adequately conceal equipment, as determined by the engineering manager. If a new pole without a streetlight is proposed, antennas and all equipment not installed underground must be concealed and integrated into the overall design of the pole, no exterior equipment boxes or shrouds attached to the pole will be permitted.

4. *Areas with decorative streetlight poles –*

- a. Replacement poles and new non-replacement poles installed within the following areas shall be substantially similar in color, style and design to the existing decorative streetlights, as determined by the engineering manager in consultation with the city planner. Poles in each area shall use a single consistent design theme to maintain the existing character established by existing streetlights:

- (1) Carlsbad Village
- (2) Villages of La Costa Master Plan
- (3) Bressi Ranch Master Plan
- (4) La Costa Master Plan (MP 149)
- (5) Various roads including El Camino Real and Aviara Parkway that utilize the mission bell streetlight design
- (6) Any other areas as determined by the city planner or engineering manager

5. *Supplemental requirements for WCFs and SWFs on existing wood utility poles –*

- a. All antennas must be installed within a radome, shroud or other cover mounted to the pole at the top, side, or on a stand-off bracket or extension arm that is attached to the pole. The city's preference is for side-mounted antennas located in the communications space below the electric lines.²
- b. All cables, wires and other connectors must be concealed within the antenna shroud, stand-off bracket/extension arm and conduit that is flush-mounted to the pole to the maximum extent feasible and of the smallest diameter and shortest length necessary to serve the facility. No loose, exposed, or dangling wiring or cables shall be allowed.
- c. All shrouds, conduit or other items stealth/concealing antennas, equipment and wires shall be painted to match the color of the pole.

D. Performance Guidelines

- 1. *Noise* – All equipment, such as emergency generators and air conditioners, should be designed and operated consistent with the city noise standards.

² Strand-mount antennas are also considered a preferred installation type.

2. *Maintenance* – All facilities, related equipment, and landscaping should be maintained in good condition and free from trash, debris, graffiti, and any form of vandalism. All required landscaping should be automatically irrigated. Damaged equipment and damaged, dead, or decaying landscaping should be replaced promptly. Replacement of landscaping that provides facility screening should be, as much as possible, of similar size (including height), type, and screening capability at the time of planting as the plant(s) being replaced.
3. *Maintenance Hours* – Except in an emergency posing an immediate public health and safety threat, maintenance activities in or within 100 feet of a residential zone should only occur between 7 AM (8 AM on Saturdays) and sunset. Maintenance should not take place on Sundays or holidays.
4. *Lighting* – Security lighting should be kept to a minimum and should only be triggered by a motion detector where practical.
5. *Compliance with laws and FCC RF Exposure Guidelines* – The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the WCR, SWF or other infrastructure deployment or any use or activities in connection with the use authorized by a required permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the city planner or engineering manager (such as, without limitation, those requirements affixed to a required permit). If the city planner or engineering manager finds good cause to believe that the facility is not in compliance with any laws applicable to human exposure to RF emissions, the city planner or engineering manager may require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the facility that certifies that the facility is in compliance with all such laws. The city planner or engineering manager may order the facility to be powered down if, based on objective evidence, the city planner or engineering manager finds that the facility is in fact not in compliance with any laws applicable to human exposure to RF emissions until such time that the permittee demonstrates actual compliance with such laws. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Carlsbad Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Carlsbad Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation. .
6. *Abandonment of antennas and equipment*- Any WCF or SWF that is not operated for a continuous period of 180 days will be considered abandoned. Within 90 days of receipt of notice from the city notifying the owner of such abandonment, the facility owner must remove the facility and restore the site, as much as is reasonable and practical, to its prior condition. If such facility is not removed within the 90 days, the facility will be considered

a nuisance and in addition to any other available remedy, will be subject to abatement under Chapter 6.16 of the Carlsbad Municipal Code. If there are two or more users of a single WCF, then this provision will not become effective until all users stop using the WCF. The provider or owner must give notice to the city of the intent to discontinue use of any facility before discontinuing the use.

7. *Annual Reports for WCFs and SWFs* – Prior to July 1 of every calendar year, each provider shall submit an annual report documenting all WCFs and SWFs that are approved but not yet built, WCFs and SWFs that are currently operating, and non-operating WCFs and SWFs. As part of this annual report, the provider shall submit: (1) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the facility under penalty of perjury, that the installation is operated in compliance with 47 U.S.C. § 324; (2) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the facility under penalty of perjury, that the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC; and (3) a copy of the fully completed FCC form “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A” titled “Optional Checklist for Determination of Whether a Facility is Categorically Excluded” for each frequency band of RF emissions transmitted from the facility. All radio frequency emissions on all frequency bands must be shown on the Appendix A form(s). All radio frequency emissions are to be entered on each Appendix A form only in wattage units of “effective radiated power.”

E. *Application and Review Guidelines*

1. *Application requirements for WCFs* – In addition to the typical submittal requirements for a CUP or Minor CUP (see Planning Division Form P-2), right-of-way permit or building permit (including plans, landscape details, and color and material samples, as appropriate), all WCF applications shall include the following items:
- a. A description of the site selection process undertaken for the WCF proposed. Technical service objectives and the reasons for selecting the proposed site and rejecting other sites should be provided.
 - b. A description or map of the applicant’s existing and other proposed sites.
 - c. A description of the wireless system proposed (e.g., cellular, PCS, etc.) and its consumer features (e.g., voice, video, and data transmissions).
 - d. Verification that the proposed WCF will either comply with the FCC’s guidelines for human exposure to RF electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines. The applicant shall submit an RF exposure compliance report that certifies that the proposed facility, both individually and cumulatively as applicable under 47 C.F.R. § 1.1307(b)(5), will comply with applicable federal RF exposure standards and exposure limits.
 - e. Color photo-simulation exhibits, prepared to scale, of the proposed WCF to show what the project would look like at its proposed location and from surrounding

- viewpoints. The city planner or engineering manager may waive the requirement to provide the exhibits if he/she determines they are unnecessary.
- f. Provide confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act or the National Historic Preservation Act.
 - g. Evidence that the public notice required for the application has been given, including a copy of the public notice mailed to the affected property owners and a complete list of property owners and other persons or entities entitled to notice.
2. *Application requirements for SWFs* – In addition to the typical submittal requirements for a right-of-way permit or building permit (including plans, landscape details, and color and material samples, as appropriate), all SWF applications shall include the following items:
- a. A description of the wireless system proposed (e.g., cellular, PCS, etc.) and its consumer features (e.g., voice, video, and data transmissions).
 - b. For new poles that are least preferred, a description of the site selection process undertaken for the proposed SWF. A technical service objective and the reasons for selecting the proposed site and rejecting other sites should be provided.
 - c. Verification that the proposed SWF will either comply with the FCC’s guidelines for human exposure to RF electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). The applicant shall submit an RF exposure compliance report that certifies that the proposed facility, both individually and cumulatively as applicable under 47 C.F.R. § 1.1307(b)(5), will comply with applicable federal RF exposure standards and exposure limits.
 - d. Color photo-simulation exhibits, prepared to scale, of the proposed WCF to show what the project would look like at its proposed location and from surrounding viewpoints. The city planner or engineering manager may waive the requirement to provide the exhibits if he/she determines they are unnecessary.
 - e. Environmental impact assessment form to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report. In addition, provide confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act or the National Historic Preservation Act.
 - f. Evidence that the public notice required for the application has been given, including a copy of the public notice mailed to the affected property owners and a complete list of property owners and other persons or entities entitled to notice.
3. For WCFs proposed in a zone or area that is a discouraged WCF location as listed in Location Guideline A.2., the applicant shall provide evidence that no location in a preferred zone or area as listed in Location Guideline A.1. is technically feasible or

potentially available to accommodate the applicant’s proposed facility. Evidence should document that preferred zone or area locations do not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations.

4. For proposed new ground-mounted monopole WCFs, the applicant shall also provide evidence to the city’s satisfaction that no existing monopole, building, structure, or WCF site (“existing facility”) could accommodate the proposal. Evidence should demonstrate any of the following:
 - a. No existing facility is located within the geographic area or provides the height or structural strength needed to meet the applicant’s engineering requirements.
 - b. The applicant’s proposed WCF would cause electromagnetic interference with the existing antennae array or vice versa.
 - c. The fees, costs, or contractual provisions required by the owner to locate on an existing facility or to modify the same to enable location are unreasonable. Costs exceeding new monopole development are presumed to be unreasonable.
 - d. The applicant demonstrates to the decision-maker’s (Planning Commission or city planner) satisfaction that there are other limiting factors that render an existing facility unsuitable.

5. In approving a WCF or SWF, the decision-maker (Planning Commission, city planner or engineering manager) shall make the findings in Carlsbad Municipal Code Section 21.42.020 if applicable, and shall give consideration to the following factors:
 - a. Compliance with these guidelines.
 - b. Height and setbacks.
 - c. Proximity to residential uses.
 - d. The nature of uses on adjacent and nearby properties.
 - e. Surrounding topography and landscaping.
 - f. Quality and compatibility of design and screening.
 - g. Impacts on public views and the visual quality of the surrounding area.
 - h. Availability of other facilities and buildings for collocation.

6. Conditional Use Permits (CUPs)/Minor CUPs for WCFs shall be granted for a period not to exceed ten years unless public safety reasons and/or substantial land use reasons justify a shorter term. A WCF that is decommissioned, discontinued, or otherwise abandoned by the owner or operator for a continuous one-year period is subject to revocation under Section 21.42.120 of the Carlsbad Municipal Code. Upon a request for either an extension or an amendment of a CUP or Minor CUP, the WCF will be reevaluated to assess the impact of the facility on adjacent properties, the record of maintenance and performance with reference to the conditions of approval, and consistency with these guidelines. Additionally, the city will review the appropriateness of the existing facility’s design, and that the applicant documented that the WCF maintains the design that is the smallest, most efficient, and least visible and that there are not now more appropriate and available locations for the facility, such as the opportunity to collocate or relocate to an existing building.

7. *Collocation for WCFs* – Pursuant to California Government Code Section 65850.6, qualifying collocation facilities for WCFs shall not be approved with a conditional use permit or conditional use permit amendment. This section does not apply to SWFs.

- a. For the purposes of collocation, the following definitions apply:
 - (1) “Collocation facility” means the placement or installation of WCFs, including antennas, and related equipment, on or immediately adjacent to, a wireless telecommunications collocation facility.
 - (2) “Wireless telecommunications facility” means equipment and network emergency power systems that are integral to providing wireless telecommunications services.
 - (3) “Wireless telecommunications collocation facility” or “WTCF” means a wireless telecommunications facility that includes Collocation facilities.
 - b. A building permit shall be required for a proposed WCF Collocation facility which will be placed on a previously approved WTCF provided that:
 - (1) The new WCF Collocation facility is consistent with requirements for the existing WTCF installation; and
 - (2) The modification of an existing wireless tower or base station does not physically change the dimensions of such tower or base station.
 - c. Approval of an application to construct or reconstruct a WCF wireless facility shall not require an escrow deposit for removal of the WCF Collocation facility or any component thereof.
 - d. Notwithstanding subsection (b) above, the city may require a performance bond or other surety or another form of security if the amount required is rationally related to the cost of removal.
8. Applications from a single provider of wireless communication services for up to 10 SWF permits may be batched and processed together. A single provider may not submit more than one batch of applications at one time. Batched applications will only be accepted prior to 4:00pm Monday through Thursday.
 9. Applications must be submitted in-person and with an appointment. Application materials delivered by U.S. mail or other delivery service will not be processed and do not constitute a submitted and duly filed application. An application is not considered duly filed and submitted unless it is provided in-person to a representative of the Community Development Department and assigned a case number or permit number as appropriate.
 10. SWFs that propose to use an existing pole, replacement pole or other existing structure shall be required to provide authorization from the pole or structure owner. Authorization may include signatures, letters, agreements or other similar methods acceptable to the city planner or engineering manager. Authorization from the owner in connection with joint utility poles may be evidenced by documentation that shows that authorization has been granted in accordance with the joint pole committee’s rules, which may include authorization deemed granted by lapse of time.
 11. *Exceptions to this policy* – The city may grant an exception to the requirements of this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in subsection (a) of this section. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance

shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.

- a. The decision maker may grant an exception to any provision or requirement in this policy only if the decision maker finds that:
 - (1) A denial based on the application’s noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) A provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- b. If the decision maker finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.
- c. The applicant shall have the burden to prove to the decision maker that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant’s request for an exception.

12. *Pre-Application Meetings* – Federal laws and policies establish time limitations (referred to as a “shot clock”) related to processing of all types of WCFs and SWFs permits. The city is required to act on a WCF or SWF permit within the established shot clock timeframes. Pre-application meetings are strongly encouraged in order to ensure that proposed facilities comply with the requirements of these Guidelines and that application materials include adequate and accurate information. A pre-application meeting is voluntary and is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments responsible for application review; and any foreseen application completeness issues.

13. *Pre-approved designs* – To expedite the review process, encourage collaborative designs among applicants and the city, and ensure cohesive and high-quality designs for new or replacement poles in areas such as those with decorative streetlights, the engineering manager in consultation with the city planner, may designate one or more pre-approved designs for small wireless facilities and other infrastructure deployments.

- a. Any applicant may propose a design for consideration as a pre-approved design. The city may, in its discretion, establish a pre-approved design when the proposed pre-approved design exceeds the design guidelines in this policy.
- b. The city may modify or repeal any pre-approved design by written notice to any applicants who have used the pre-approved design, and by posting the notice at the Land Use Engineering counter. The modification or repeal shall be effective immediately.
- c. Any applicant may propose to use any pre-approved design whether the applicant initially requested that the city adopt such pre-approved design or not. The city’s decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the

pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.

14. A master license agreement or other authorization is required prior to permit submittals for WCF or SWF installations that will locate on city-owned property or facilities.
15. At the time of filing the application, the applicant shall pay all applicable fees contained in the most recent fee schedule adopted by the city council.
16. An applicant may voluntarily elect to defer submittal of any permit or agreement which is otherwise required as part of a whole application. The voluntary deferral of any such permit or agreement shall toll the shot clock on that item. Once the voluntarily deferred item is received, the city will provide comments on any deferred submittal in the same manner as if it was a new application. The city will continue to process all other permits and agreements that are not deferred.
17. *Technical Experts –*
 - a. Authorization. The city may in its discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues in connection with any permit application. The city may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will comply with applicable laws; (e) 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 (f) any other issue identified by the city that requires expert or specialized knowledge., including without limitation any issues related to an exception requested by the applicant pursuant to Section E.11 of this Policy. The city may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.
 - b. Cost Reimbursement. Subject to applicable law, in the event that the city elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs incurred by the city in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings and any costs incurred by the City to administer the independent consultant contract. The City may require that the applicant tender to the city a deposit in an amount equal to the estimated actual and reasonable cost for the services to be provided, as determined by the city, or otherwise require the applicant to reimburse the city in accordance with the city’s procedures. The city may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant’s services. If the deposit exceeds the total costs

for the independent consultant’s services, the city shall promptly return any unused funds to the applicant after the facility has been installed and passes a final inspection. If the reasonable costs for the independent consultant’s services exceed the deposit, the city shall invoice the applicant for the balance. The city may refrain from issuing construction or encroachment permits to any applicant with any unpaid deposit requests or invoices.

18. *Public notice for WCFs and SWFs in the ROW* – Any application shall include evidence of compliance with public notice requirements, or otherwise will be considered incomplete for processing. Not more than 10 days before submittal of the applicable permit application, applicants are required to send a notice of intent to request a permit for an WCF or SWF installation. Public notices for a WCF or SWF not subject to a CUP or MCUP shall meet the following requirements:
- a. The public notice shall be sent via first class U.S. Postal Service and include:
 - (1) A brief description of the proposed installation
 - (2) Project name
 - (3) Location including address or nearest cross streets as appropriate
 - (4) The applicant name, contact person, telephone number and email address
 - (5) 8-1/2” x 11” site plan and elevations
 - (6) Statement that the public can provide input to the applicant at the provided contact information
 - b. The applicant shall send the public notice to:
 - (1) Property owners within a 300 foot radius of the subject location according to the latest equalized assessment rolls current as of the date of the application.
 - (2) The homeowners association of which the subject property is a part (if any). Notice shall be mailed to both the property management company and HOA board of directors.
19. *Indemnification* – For any WCF or SWF not subject to a master license agreement, the permittee and, if applicable, the owners of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city’s boards, board members, commissions, commissioners, agents, officers, officials, employees and volunteers (collectively, the “city indemnitees”) from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings (“claims”) brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city’s approval of the applicable permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee’s or its agents’, directors’, officers’, employees’, contractors’, subcontractors’, licensees’ or customers’ acts or omissions in connection with the applicable permit or the WCF or SWF. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner(s) (if applicable) and shall reasonably cooperate in the defense. The permittee and property owner expressly acknowledge and agree that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city’s defense, and the property owner and/or permittee (as applicable) shall promptly

reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee and property owner expressly acknowledge and agree that the permittee’s indemnification obligations under this provision are a material consideration that motivates the city to approve the applicable permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the applicable permit.

20. *Insurance* – For all WCFs and SWFs not subject to a master license agreement, applicants shall maintain adequate insurance that meets the following requirements:

a. Policies and Limits. At all times relevant to the applicable permit, the permittee shall obtain and maintain insurance policies as follows:

- (1) Commercial General Liability Insurance. Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$1,000,000 per occurrence or \$2,000,000 in the aggregate, unless higher limits are required by the city’s risk manager. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in the applicable permit.
- (2) Automotive Insurance. Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers’ Compensation Insurance. The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under the applicable permit. To the extent the permittee has employees at any time during the term of the applicable permit, at all times during the performance of the work under such permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- (4) Professional Liability Insurance. The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee’s profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability

applicable to the required permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. “Covered Professional Services” as designed in the policy must specifically include work performed under the applicable permit.

- b. Claims-Made Policies. If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- c. Umbrella or Excess Liability Policies. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- d. Additional Insured; Separation of Insureds. The relevant CGL and automotive insurance policies shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- e. Primary Insurance; Waiver of Subrogation. The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies.
- f. Term; Cancellation Notice. The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days’ prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.
- g. Certificates. Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the

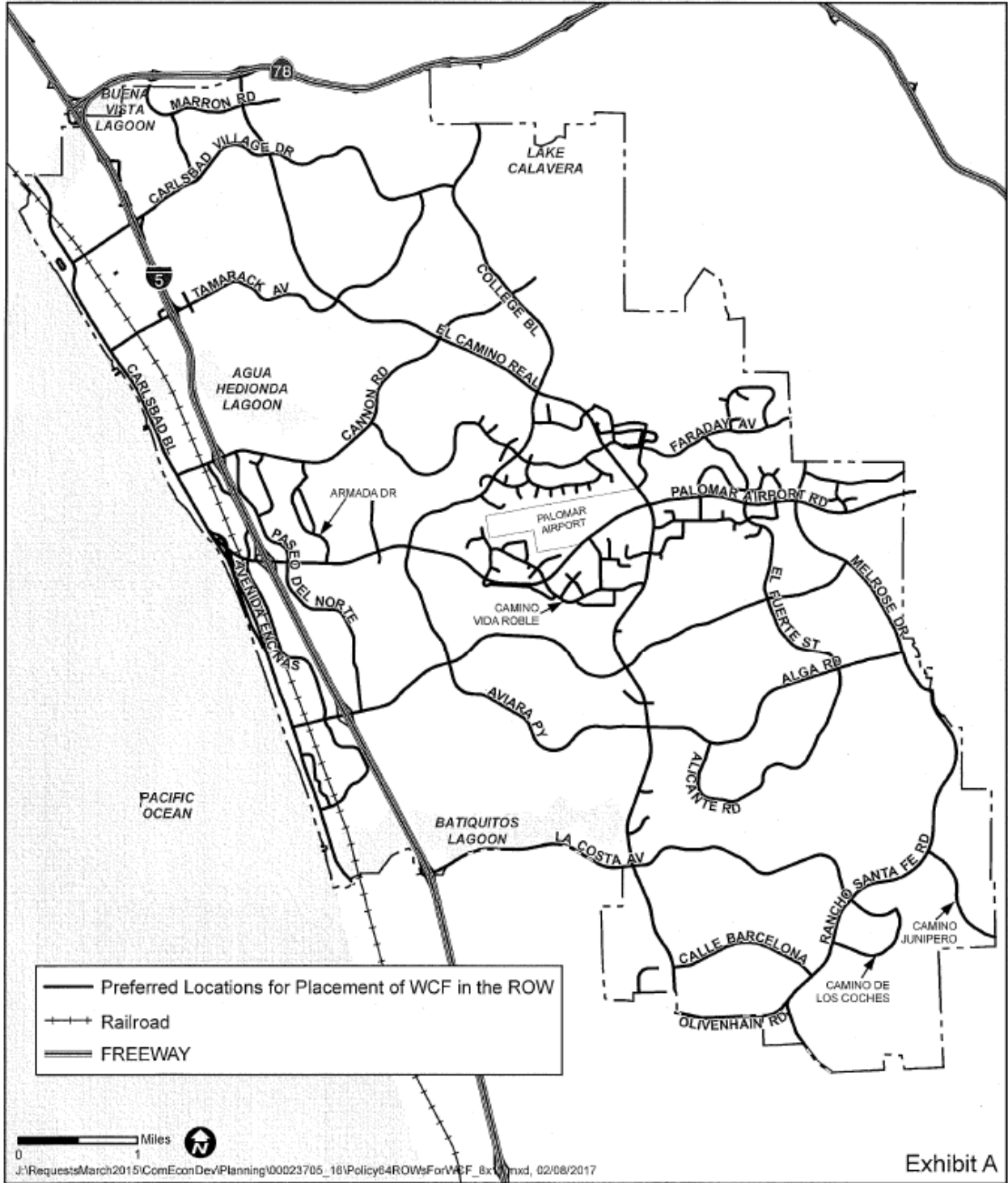
permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.

- h. Insurer Rating. Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-VIII.

SEVERABILITY:

If any sections, subsections, sentence, clause, or phrase of the policy is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the policy. The City Council declares that it would have approved this policy, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

These Guidelines have been adopted, and may be amended, by resolution of the City Council. Revisions to address clerical errors may be made administratively by the Director of Community Development.



Preferred Locations for Placement of Wireless Communication Facilities in the Right-of-Way

September 26, 2017

Item #2

Page 16 of 30