



CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

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Long Beach, CA 90802

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October 21, 2010

CHAIR AND PLANNING COMMISSIONERS
City of Long Beach
California

RECOMMENDATION:

Receive the proposed zoning amendments regarding updates to the City's regulation of wireless telecommunications facilities, and forward said amendments to the City Council with a recommendation of approval for adoption into ordinance. (Citywide)

APPLICANT: City of Long Beach Department of Development Services
333 W. Ocean Blvd., 5th Floor
Long Beach, CA 90802
(Application No. 1004-27)

DISCUSSION

As of April 20, 2010, a moratorium has been in effect in the City of Long Beach, temporarily halting the approval of permits for wireless telecommunications facilities. This moratorium subsequently was amended to include only sites in Residential (R) and Institutional (I) zoning districts. The moratorium was intended to give the Department of Development Services time to conduct a study of other cities' new wireless ordinances, conduct community meetings and outreach, and present findings to the Planning Commission in several study sessions.

Staff has indicated the need to update the wireless telecommunications ordinance since a 2009 study session, and discussed the issue in more detail with the Commission at the February 18, 2010 study session. After the adoption of the initial moratorium on April 20, 2010, staff carried out an extensive survey of other cities' wireless ordinances and best practices, and conducted outreach to both Long Beach residents and members of the wireless industry. Staff brought a framework of the new ordinance to the study session of June 17, 2010, and then presented a first draft of the text of the proposed new ordinance at the August 19, 2010 study session.

At this study session, the Commission requested more clarity on the design standards, applicability of the ordinance, and an understanding of the approval process. Many Long Beach residents conveyed a desire for stricter limits on radio frequency (RF) emissions from wireless sites, a ban on sites in and near residential land uses, and stricter reporting and testing requirements for RF emissions, beyond what is required by the Federal Communications Commission (FCC). Representatives from the wireless carriers, including their legal counsel, claimed the opposite—that the draft ordinance is too strict and places unnecessary and onerous burdens on the wireless industry, both in the application process and in the regulation of site

locations and design. At the study session, staff and the Assistant City Attorney requested that all interested parties submit their comments and concerns in writing so that the City may more effectively respond and modify the draft ordinance accordingly. Staff received three letters from wireless carrier representatives, as well as a number of emails and telephone calls from residents—though many of the comments from residents focused on their dissatisfaction with one existing wireless site currently under construction, rather than with the draft ordinance.

The current revised draft ordinance (Exhibit A – Revised Draft Ordinance) would completely replace the City's existing rules on wireless telecommunications facilities, and would accomplish the following:

- Encourage placement of these facilities away from residential areas. Applicants would have to meet a high burden of proof to demonstrate that no other feasible locations are available before a wireless site would be placed in a residential area (however, wireless sites cannot be completely banned from residential areas without exposing the City to legal action, as a ban may effectively deny the provision of wireless service, which is prohibited by law, and is not the intent of this ordinance).
- Require co-location instead of construction of a new site any time a co-location opportunity is available.
- Require reports on each site's compliance with FCC rules on radio frequency emissions.
- Institute a requirement for a master Conditional Use Permit (CUP) and 10-year build-out plan for each site.
- Set clear design standards for sites, especially roof/building-mounted sites.
- Set higher application standards, including provision of more information about surrounding sites and all of the applicant carrier's existing sites in the City.
- Set standards for development of wireless sites in the public right-of-way.

Additionally, staff has made several major revisions following the August 19 study session and consultation with community members and representatives of the wireless industry:

- Reduced the nearby site reporting radius for applications from 2.5 miles to one mile;
- Revised definitions in the ordinance to provide more clarity;
- Eliminated area limitations for rooftop and ground-mounted equipment areas;
- Removed unfeasible requirements for wind, solar, and other alternative energy sources as backup power sources;
- Rearranged code language to put higher priorities above lower priorities in the outline flow; and
- Clarified standards for placement of sites in the public right-of-way.

Staff has also included a flowchart to provide more clarity on how wireless applications would be affected by the new ordinance (Exhibit B – Wireless Application Flowchart).

Staff believes that the proposed amendments will accomplish the City's goals of increasing design review and aesthetic control over wireless sites to reduce the potential visual blight caused by these uses, while at the same time setting clear rules and expectations to create less uncertainty for City residents and the wireless industry and to allow permits to be processed in an objective

and expeditious manner. For those reasons, staff recommends that the Planning Commission forward these amendments to the City Council with a recommendation of approval.

PUBLIC HEARING NOTICE

A public hearing notice was published in the Long Beach Press-Telegram on October 3 and 5, 2010, as required by the Long Beach Municipal Code. Staff has received a number of comments and inquiries on the item (Exhibit C – Public comments).

ENVIRONMENTAL REVIEW

In accordance with the Guidelines for Implementation of the California Environmental Quality Act, a Categorical Exemption (CE) was prepared for the proposed project (Exhibit D – CE 10-064).

Respectfully submitted,


AMY J. BODEK, AICP *for*

DIRECTOR OF DEVELOPMENT SERVICES

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Attachments	Exhibit A – Draft ordinance
	Exhibit B – Wireless Application Flowchart
	Exhibit C – Public Comments
	Exhibit D – Categorical Exemption CE 10-064

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 21.56 RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES

The City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding Chapter 21.56 to read as follows:

Chapter 21.56

Wireless Telecommunications Facilities

21.56.010 Purpose and objectives.

The purpose of this Chapter is to regulate the establishment and operation of wireless telecommunications facilities within the City of Long Beach, consistent with the General Plan, and with the intent to:

- A. Allow for the provision of wireless communications services adequate to serve the public's interest within the City;
- B. Require, to the maximum extent feasible, the co-location of wireless telecommunications facilities;
- C. Minimize the negative aesthetic impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health,

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1 safety and welfare of the City of Long Beach;

2 D. Strongly encourage the location of wireless
3 telecommunications facilities in those areas of the City where the adverse
4 aesthetic impact on the community is minimal;

5 E. Strongly encourage wireless telecommunications providers to
6 configure all facilities in such a way that minimizes displeasing aesthetics
7 through careful design, siting, landscaping, screening, and innovative
8 camouflaging techniques;

9 F. Enhancing the ability of the providers of telecommunications
10 services to provide such services to the City quickly, effectively, and
11 efficiently; and

12 G. Conform to all applicable federal and state laws.

13
14 21.56.020 Definitions.

15 In addition to all those terms defined in Chapter 21.15 of the Zoning
16 Regulations, the following terms shall have the meanings set forth below,
17 for the purposes of this Chapter:

18 A. "Abandoned." Notwithstanding the definition of "abandoned"
19 in Section 21.15.030, a wireless telecommunications facility use shall be
20 considered abandoned if it is not in use for six (6) consecutive months.

21 B. "Co-location" means the placement or installation of wireless
22 telecommunications facilities, including antennas and related equipment,
23 on an existing wireless telecommunications facility in the case of
24 monopoles, or ~~immediately adjacent to a wireless telecommunications~~
25 ~~facility~~ on the same building ~~or group of buildings~~ in the case of
26 roof/building-mounted sites.

27 C. "Co-location facility" means a wireless telecommunications
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1 facility that has been co-located consistent with the meaning of “co-
2 location” as defined above. It does not include the initial installation of a
3 new wireless telecommunications facility where previously there was none,
4 nor the construction of an additional monopole on a site with an existing
5 monopole.

6 D. “Wireless Telecommunications Facility” means equipment
7 installed for the purpose of providing wireless transmission of voice, data,
8 images, or other information including but not limited to, cellular telephone
9 service, personal communications services, and paging services,
10 consisting of equipment, antennas, and network components such as
11 towers, utility poles, transmitters, base stations, and emergency power
12 systems. “Wireless telecommunications facility” does not include radio or
13 television broadcast facilities, nor radio communications systems for
14 government or emergency services agencies.

15 E. “Monopole” means any single freestanding pole structure
16 used to support wireless telecommunications antennas or equipment at a
17 height above the ground. This includes those poles camouflaged to
18 resemble natural objects.

19 F. “Roof/building-mounted site” means any wireless
20 telecommunications facility, and any appurtenant equipment, located on a
21 rooftop or building, having no support structure such as a monopole or
22 other type of tower.

23 G. “Utility Pole” means any pole or tower owned by any utility
24 company that is located in the public right-of-way and primarily used to
25 support wires or cables necessary to the local distribution of electrical or
26 other utility services regulated by the California Public Utilities Commission.
27 This does not include towers for high-voltage electrical power transmission
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1 between generating plants and electrical substations.

2 H. "Residential/Institutional Planned Development (PD) District"
3 means the following Planned Development Districts within the City of Long
4 Beach: PD-5 (Ocean Boulevard), PD-10 (Willmore City), PD-11 (Rancho
5 Estates), PD-17 (Alamitos Land), PD-20 (All Souls), and PD-25 (Atlantic
6 Avenue), as well as any future PDs designated as such in the PD
7 ordinance.

8
9 21.56.030 Permit requirements for new wireless telecommunications
10 facilities that are not co-location facilities.

11 All new wireless telecommunications facilities that are not co-
12 location facilities shall meet the following standards and requirements:

13 A. A Conditional Use Permit shall be required for the initial
14 construction and installation of all new wireless telecommunications
15 facilities in accordance with all Specific Procedures set forth in Chapter
16 21.21 and Chapter 21.25, Division II, of the Zoning Regulations, except as
17 modified by this Chapter.

18 B. Roof/building-mounted Facilities. All new wireless
19 telecommunications facilities that are not co-location facilities, that are
20 roof/building-mounted facilities shall also be subject to Site Plan Review, in
21 addition to the Conditional Use Permit requirement in Section 21.56.030.A.

22
23 21.56.040 Development and design standards for new wireless
24 telecommunications facilities that are not co-location facilities.

25 All new wireless telecommunications facilities shall meet the
26 following minimum standards. ~~Where appropriate, more restrictive~~
27 ~~requirements may be imposed as a condition of Conditional Use Permit~~
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1 ~~approval.~~

2 A. Location. New wireless telecommunications facilities shall not
3 be located in Residential (R) or Institutional (I) zoning districts, or
4 Residential/Institutional Planned Development (PD) Districts (as defined in
5 Section 21.56.020.H), unless the applicant demonstrates, by a
6 preponderance of evidence, that a review has been conducted of other
7 options with less environmental impact, and no other sites or combination
8 of sites allows feasible service or adequate capacity and coverage. This
9 review shall include, but is not limited to, identification of alternative site(s)
10 within ~~two and one-half (2.5)~~ a one (1) miles radius of the proposed facility.
11 See Section 21.56.050 for additional application requirements.

12 B. Co-location required where possible. New wireless
13 telecommunications facilities shall not be located in areas where co-
14 location on existing facilities would provide equivalent coverage, network
15 capacity, and service quality with less environmental or aesthetic impact.

16 C. Accommodation of Co-location. Except where aesthetically
17 inappropriate in the determination of the Staff Site Plan Review Committee,
18 new wireless telecommunications facilities shall be constructed so as to
19 accommodate co-location, and must be made available for co-location
20 unless technologically infeasible. In cases where technological infeasibility
21 is claimed, it shall be the responsibility of the party making such claim to
22 demonstrate, by a preponderance of evidence, that such co-location is, in
23 fact, infeasible.

24 D. Additional Development and Design Standards. Wireless
25 telecommunications facilities also shall be subject to the additional design
26 standards specified in Section 21.56.100.

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1 21.56.050 Application requirements for new wireless
2 telecommunications facilities that are not co-location facilities.

3 In addition to the requirements set forth in Section 21.21.201 of the
4 Zoning Regulations and Chapter 21.25 (Specific Procedures) of the Zoning
5 Regulations, applicants for new wireless telecommunications facilities shall
6 submit the following materials regarding the proposed wireless
7 telecommunications facility:

- 8 ~~A.~~ A completed Planning Permit Application;
- 9 ~~B.~~ A completed Environmental Review Application;
- 10 ~~C.~~ Proof of ownership or a statement of consent from the owner
11 of the property;
- 12 ~~D.~~ A site plan, including a landscape plan (if applicable under
13 21.56.100.B.1);
- 14 ~~E.~~ Elevation drawings, specifically showing the height of the
15 facility above grade;
- 16 ~~F.~~ A. Photo simulations of the facility from reasonable line-of-sight
17 locations from public roads or viewpoints;
- 18 ~~G.~~ B. A maintenance plan detailing the type and frequency of
19 required maintenance activities, including maintenance of landscaping and
20 camouflaging, if applicable;
- 21 ~~H.~~ C. For projects that are technically capable of accommodating
22 additional facilities (co-location), a description of the planned maximum ~~ten~~
23 five (5)-year build-out of the site for the applicant's wireless
24 telecommunications facilities, including, to the extent possible, the full
25 extent of wireless telecommunications facility expansion associated with
26 future co-location facilities by other wireless service providers. The
27 applicant shall use best efforts to contact all other wireless service
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1 providers ~~in the City~~ known to be operating in the City upon the date of
2 application, to determine the demand for future co-locations at the
3 proposed site, and, to the extent feasible, shall provide written evidence
4 that these consultations have taken place, and a summary of the results, at
5 the time of application. The City shall, within thirty (30) days of its receipt of
6 an application, identify any known wireless service providers that the
7 applicant has failed to contact and with whom the applicant must undertake
8 their best efforts to fulfill the above consultation and documentation
9 requirements. The location, footprint, maximum tower height, and general
10 arrangement of future co-locations shall be identified by the ~~ten (10)~~ five
11 (5)-year build-out plan. If future co-locations are not technically feasible, a
12 written explanation shall be provided.

13 f. D. Identification of existing wireless telecommunications facilities
14 within a ~~two and one-half (2.5)~~ one (1) mile radius of the proposed location
15 of the new wireless telecommunications facility, and an explanation of why
16 co-location on these existing facilities, if any, is not feasible. This
17 explanation shall include such technical information and other justifications
18 as are necessary to document the reasons why co-location is not a viable
19 option. The applicant shall provide a list of all existing structures
20 considered as alternatives to the proposed location. The applicant shall
21 also provide a written explanation for why the alternatives considered were
22 either unacceptable or infeasible. If an existing wireless
23 telecommunications facility was listed among the alternatives, the applicant
24 must specifically address why the modification of such wireless
25 telecommunications facility is not a viable option. The written explanation
26 shall also state the radio frequency coverage and capacity needs and
27 objectives of the applicant, and shall include maps of existing coverage
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1 and predicted new coverage with the proposed facility.

2 ~~J. E.~~ A statement that the proposed wireless telecommunications
3 facility is available for co-location, or an explanation of why future co-
4 location is not technically feasible.

5 ~~K. F.~~ A radio frequency (RF) report describing the emissions of the
6 proposed wireless telecommunications facility ~~and, to the extent~~
7 ~~reasonably ascertainable, the anticipated increase in emissions associated~~
8 ~~with future co-location facilities.~~ The report shall demonstrate that the
9 emissions from the proposed equipment as well as the cumulative
10 emissions ~~from future co-location equipment and the existing facility at the~~
11 ~~site~~ will not exceed the limits established by the Federal Communications
12 Commission (FCC).

13 ~~L. — The mandated entitlement application fee, and other fees as~~
14 ~~applicable.~~

15 ~~M. G.~~ Applications for the establishment of new wireless
16 telecommunications facilities inside Residential (R) or Institutional (I)
17 zoning districts, Residential/Institutional Planned Development (PD)
18 Districts (as defined in Section 21.56.020.H), and residential or institutional
19 General Plan Land Use Districts (LUDs) shall be accompanied by a
20 detailed alternatives analysis that demonstrates that there are no feasible
21 alternative non-residential, non-institutional sites or combination of non-
22 residential, non-institutional sites available to eliminate or substantially
23 reduce significant gaps in the applicant service provider's coverage or
24 network capacity.

25 ~~N. H.~~ An engineering certification providing technical data sufficient
26 to justify the proposed height of any new monopole or roof/building
27 mounted site.

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1 O. I. A cash or other sufficient deposit for a third party peer review
2 as required by this Chapter.

3
4 21.56.060 Entitlement, term, renewal, and expiration.

5 A. Conditional Use permits and other entitlements for wireless
6 telecommunications facilities, including approval of the ~~ten (10)~~ five (5)-
7 year build-out plan as specified in Section 21.56.050.HC, shall be valid for
8 ten (10) years following the date of final action. A ten (10)-year term is
9 prescribed for Conditional Use Permits for this class of land uses due to
10 the unique nature of development, exceptional potential for visual and
11 aesthetic impacts, and the rapidly changing technologic aspects that
12 differentiate wireless telecommunications from other Conditional land uses
13 allowed by the City. The applicant or operator shall file for a renewal for the
14 entitlement and pay the applicable renewal application fees six months
15 prior to expiration with the Department of Development Services, if
16 continuation of the use is desired. In addition to providing the standard
17 information and application fees required for renewal, wireless
18 telecommunications facility renewal applications shall provide an updated
19 build-out description prepared in accordance with the procedures
20 established by Section 21.56.050.HC.

21 B. Where required, renewals for entitlements for existing
22 wireless telecommunications facilities and co-location facilities constructed
23 prior to the effective date of this Chapter are subject to the provisions of
24 Sections 21.56.030 through 21.56.050. Renewals of entitlements approved
25 after the effective date of this chapter shall only be approved if all
26 conditions of the original entitlement have been satisfied, and the ~~ten (10)~~
27 five (5)-year build-out plan has been provided.

1 C. If the entitlement for an existing wireless telecommunications
2 facility has expired, applications for co-location at that site, as well as after-
3 the-fact renewals of entitlements for the existing wireless
4 telecommunications facilities, shall be subject to the standards and
5 procedures for new wireless telecommunications facilities outlined set forth
6 in Sections 21.56.030 through 21.56.050.

7
8 21.56.070 Permit requirements for co-location facilities.

9 A. Co-location Facilities Requiring a Conditional Use Permit.
10 Applications for co-location will be subject to the standards and procedures
11 outlined set forth for new wireless telecommunications facilities, above
12 (Sections 21.56.030 through 21.56.060), if any of the following apply:

13 1. No Conditional Use Permit was issued for the original
14 wireless telecommunications facility;

15 2. The Conditional Use Permit for the original wireless
16 telecommunications facility did not allow for future co-location facilities or
17 the extent of site improvements involved with the co-location project (in this
18 case, an application for a modification to the approved Conditional Use
19 Permit, subject to Planning Commission review, may be substituted for a
20 new Conditional Use Permit); or

21 3. No environmental review was completed for the
22 location of the original wireless telecommunications facility that addressed
23 the environmental impacts of future co-location facilities (in this case, an
24 application for a modification to the approved Conditional Use Permit,
25 subject to Planning Commission review, may be substituted for a new
26 Conditional Use Permit).

27 B. Permit Requirements for Other Co-location Facilities.
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1. Roof/building-mounted Facilities With Visible Exterior Changes. Roof/building-mounted co-location facilities proposing visible exterior changes to the site shall be subject to Site Plan Review.

2. All Others. Applications for all other co-location facilities shall be subject to a building permit approval. Prior to the issuance of a building permit for co-location, the applicant shall demonstrate compliance with the conditions of approval, if any, of the original Conditional Use Permit, by submitting an application to the Department of Development Services for an administrative review of the original Conditional Use Permit and the proposed co-location facility's compliance therewith, including all information requests and associated application review fees, as established by the Department of Development Services or the City Council. The applicant shall not file an application for a building permit until the applicant receives written notification that this administrative review is complete and the proposed co-location facility is in compliance with said Conditional Use Permit. The applicant shall pay a fee for this administrative review in the amount adopted by the City Council in a resolution.

21.56.080 Development and design standards for co-location facilities.

A. Compliance with discretionary approvals. The co-location facility shall comply with all approvals and conditions of the underlying (existing) discretionary permit for the wireless telecommunications facility.

B. Harmonious Design. To the extent feasible, the design of co-location facilities shall also be in visual harmony with the other wireless telecommunications facility(ies) on the site.

C. Additional Design Standards. Co-location facilities also shall

1 be subject to the additional design standards specified in Section
2 21.56.100.

3
4 21.56.090 Application requirements for co-location facilities.

5 Applications that qualify for administrative review of co-location
6 facilities in accordance with Section 21.56.070 shall be required to submit
7 the following:

8 ~~A. A completed Planning Permit Application form;~~

9 ~~B. Proof of ownership or statement of consent from the owner of~~
10 ~~the property and the primary operator of the wireless telecommunications~~
11 ~~facility on the site;~~

12 ~~C. A site plan showing existing and proposed wireless~~
13 ~~telecommunications facilities and all other structures and improvements on~~
14 ~~the site;~~

15 ~~D. Elevation drawings showing existing and proposed wireless~~
16 ~~telecommunications facilities and their heights above grade, and all other~~
17 ~~structures as necessary;~~

18 ~~E. A. Photo simulations of the facility from reasonable line-of-sight~~
19 ~~locations from public roads or viewpoints;~~

20 ~~F. B. A maintenance and access plan that identifies any changes~~
21 ~~to the original maintenance and access plan associated with the existing~~
22 ~~wireless telecommunications facility and Conditional Use Permit;~~

23 ~~G. C. A Radio Frequency (RF) report demonstrating that the~~
24 ~~emissions from the co-location equipment as well as the cumulative~~
25 ~~emissions from the co-location equipment and the existing facility will not~~
26 ~~exceed the limits established by the Federal Communications Commission~~
27 ~~(FCC) and the Conditional Use Permit for the existing wireless~~
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1 telecommunications facility;

2 H. — The mandated administrative review fee, and other fees, as
3 applicable;

4 I.D. Prior to the issuance of a building permit, the applicant shall
5 submit color samples, and materials samples if requested, for the co-
6 location equipment and any screening devices. Paint colors and materials
7 shall be subject to the review and approval of the Department of
8 Development Services. Color verification shall occur in the field after the
9 applicant has painted the equipment the approved color, but before the
10 applicant schedules a final inspection.

11
12 21.56.100 Development and design standards for all wireless
13 telecommunications facilities and co-location facilities.

14 The following standards shall apply to new wireless
15 telecommunications facilities and co-location facilities.

16 A. The adverse visual impact of utility structures (such as
17 monopoles) wireless telecommunications facilities shall be avoided by:

- 18 1. Siting new wireless telecommunications facilities
19 outside of public viewshed whenever feasible;
- 20 2. Maximizing the use of existing vegetation and natural
21 features to cloak wireless telecommunications facilities, and
- 22 3. Constructing towers or monopoles no taller than
23 necessary to provide adequate coverage, network capacity, and service
24 quality, and
- 25 4. Grouping buildings, shelters, cabinets, ground lease
26 areas, and other equipment together, to avoid spread of these structures
27 across a parcel or lot.

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1 B. When visual impacts cannot be avoided, they shall be
2 minimized and mitigated by:

3 1. Screening wireless telecommunications facilities and
4 co-location facilities with landscaping consisting of ~~non-invasive native~~
5 drought-tolerant plant material. All ground lease areas shall be landscaped
6 with climbing ~~ivy vines~~ on the exterior of the enclosure wall, planted not
7 more than four (4) feet on center. Adequate irrigation systems shall be
8 provided for landscaping. The landscape screening requirement may be
9 modified or waived by the Director of Development Services in instances
10 where landscaping would not be appropriate;

11 2. Painting all equipment to blend with the surrounding
12 environment as specified in Section 21.56.100.D (Paint Colors); and

13 3. Designing wireless telecommunications facilities and
14 co-location facilities to blend in with the surrounding environment. Attempts
15 to replicate trees or other natural objects are strongly discouraged and
16 shall be used only as a last resort when all other options have been
17 exhausted.

18 C. Roof/building-mounted Facilities. For roof/building-mounted
19 wireless telecommunications facilities and co-location facilities, the
20 following standards also shall apply:

21 1. Antenna Location.

22 a. ~~Antennas shall be located on the building~~
23 ~~rooftop, above the ceiling plate of the highest occupied floor. Antennas~~
24 mounted on the façade of a building are prohibited.

25 b. ~~Antennas mounted on the façade of a building~~
26 ~~are prohibited. Antennas shall be located on the building rooftop, above the~~
27 ceiling plate of the highest occupied floor.
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1 c. Antennas shall be located as far away as
2 possible from the edge of the building or roof, with the goal of reducing or
3 eliminating visibility of the installation from any and all vantage points.

4 2. Equipment Location

5 a. All equipment appurtenant to a roof/building-
6 mounted wireless telecommunications site shall be located inside an
7 existing building whenever physically possible, to the satisfaction of the
8 Staff Site Plan Review Committee.

9 b. If it is physically impossible for equipment to be
10 located inside an existing building and the equipment is to be located on a
11 building rooftop, the equipment shall be subject to the same screening and
12 location requirements as the antennas. If no space for the equipment is
13 available for lease in a building because all possible spaces are leased and
14 occupied, this shall constitute a physical impossibility.

15 3. Screening Required

16 a. ~~All antennas and equipment mounted on a~~
17 ~~building shall be screened in a manner that is architecturally compatible~~
18 ~~with the existing building and is otherwise made as unobtrusive as~~
19 ~~possible. Screening shall use matching colors, materials, and architectural~~
20 ~~styles to create a harmonious addition to the building's architecture without~~
21 ~~disrupting its form, volume, massing, or balance. Where physically~~
22 ~~possible, antennas and equipment shall be located entirely within an~~
23 ~~existing architectural feature or screening device. This shall include areas~~
24 ~~used or occupied by other wireless service providers where feasible.~~

25 b. ~~Where physically possible, antennas and~~
26 ~~equipment shall be located entirely within an existing architectural feature~~
27 ~~or screening device. This shall include areas used or occupied by other~~
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1 ~~wireless service providers where feasible.~~ All antennas and equipment
2 mounted on a building rooftop shall be screened in a manner that is
3 architecturally compatible with the existing building and is otherwise made
4 as unobtrusive as possible. Screening shall use matching colors, materials,
5 and architectural styles to create a harmonious addition to the building's
6 architecture without disrupting its form, volume, massing, or balance.

7 c. All antennas, including panel antennas,
8 microwave antennas, GPS antennas, any other antennas, and all other
9 equipment mounted on the building, shall be ~~totally~~ concealed behind the
10 screening device on all sides such that the antennas and appurtenant
11 equipment is not visible from ~~any location on~~ the exterior of the subject
12 property, from other property, or the public right-of-way.

13 d. Cable trays/cable runs. All cable trays and
14 cable runs shall be located within existing building walls whenever
15 physically possible. Cable trays and runs on the façade of a building are
16 strongly discouraged. Any façade-mounted cable trays and runs shall be
17 painted and textured to match the building and shall be mounted as close
18 to the façade surface as possible, with no discernible gap between. Cable
19 trays and runs mounted on a roof deck and below the height of the parapet
20 wall or screening device shall be exempt from this requirement, provided
21 they are fully screened by the parapet wall or screening device. Exposed
22 cable trays and runs on a sloped roof are prohibited.

23 e. Exemption from screening. At the discretion of
24 the ~~Director of Development Services~~ Staff Site Plan Review Committee,
25 part or all of a proposed roof/building-mounted wireless
26 telecommunications facility or co-location facility may be exempted from
27 screening requirements if the best feasible screening design would result in
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1 greater negative visual impacts than if part or all of the proposed
2 installation were unscreened.

3 4. Restriction on Historic Landmark structures.

4 Installation of a roof/building-mounted wireless telecommunications facility
5 or co-location facility at a City-designated Historic Landmark shall make no
6 changes to the external appearance of the building unless approved by the
7 Cultural Heritage Commission.

8 D. Paint Colors. Paint colors for a wireless telecommunications
9 facility and co-location facility shall minimize the facility's visual impact by
10 blending with the surrounding environment, terrain, landscape, or buildings
11 (not sky colors, as the sky is a luminous source of light at all times and no
12 non-luminous object can physically be made to blend with the sky). Paint
13 colors shall be subject to the review and approval of the Department of
14 Development Services. Color verification shall occur in the field after the
15 applicant has painted the equipment in the approved color(s), but before
16 the applicant schedules a final inspection.

17 E. Non-reflective materials. The exteriors of wireless
18 telecommunications facilities and co-location facilities shall be constructed
19 of non-reflective materials.

20 F. Underlying Zone Requirements Setbacks. Wireless
21 telecommunications facilities and co-location facilities shall comply with all
22 the setback requirements and development standards of the underlying
23 zoning district(s), including, but not limited to, setbacks, except as modified
24 by this Chapter.

25 G. Height. Except as otherwise provided below, ground-mounted
26 towers, spires and similar structures Facilities subject to the provisions of
27 this Chapter may be built and used to a greater height than the limit
28

1 established for the zoning district in which the structure is located, ~~provided~~
2 ~~that no tower, spire, or similar structure subject to the provisions of this~~
3 ~~Chapter shall ever exceed a maximum height of one hundred twenty feet~~
4 ~~(120') in any zoning district, except as otherwise provided below.~~

5 1. No monopole or other freestanding structure shall ever
6 exceed a maximum height of one hundred twenty feet (120') in any zoning
7 district. In any Residential (R) or Institutional (I) zoning district, or
8 Residential/Institutional Planned Development (PD) district (as defined in
9 Section 21.56.020.H), no monopole or ~~antenna~~ other freestanding structure
10 shall exceed a maximum height of fifty-five feet (55') ~~above grade.~~

11 ~~2. For facilities in the public right-of-way, the height shall~~
12 ~~not exceed that of the nearest adjacent utility pole. Where no utility poles~~
13 ~~are present, height shall be limited to forty-five feet (45') above grade.~~

14 ~~3. 2.~~ A roof/building-mounted wireless telecommunications
15 facility shall not exceed the maximum height allowed in the applicable
16 zoning district, or 10 feet above the building roof deck, whichever is higher,
17 except that in any R-1, R-2, or R-3 district, no roof/building-mounted site
18 shall exceed the maximum height for structures allowed in that district.

19 ~~4. 3.~~ Notwithstanding the height limits set forth in the
20 preceding sections, for facilities to be mounted on towers used for high-
21 voltage electrical power transmission between generating plants and
22 electrical substations (not utility poles), the antennas may be mounted as
23 high as necessary on the tower, provided that the top of the highest
24 antenna is not higher than the top of the existing tower.

25 H. Accessory Buildings. In any ~~Residential (R) or Institutional (I)~~
26 ~~zoning district, or Residential/Institutional Planned Development (PD)~~
27 ~~district (as defined in 21.56.020.H),~~ accessory buildings in support of the
28

1 operation of the wireless telecommunications facility or co-location facility
2 may be constructed, provided that they comply with the development
3 standards set forth for accessory structures for the zoning district in which
4 the site is located. ~~provisions of Section 21.31.245.C. If an accessory~~
5 ~~building not in support of a wireless telecommunications facility already~~
6 ~~exists on a parcel, no accessory building in support of a wireless~~
7 ~~telecommunications facility may be constructed unless the existing~~
8 ~~accessory building first is removed. If an accessory building(s) in support of~~
9 ~~a wireless telecommunications facility already is constructed on a parcel,~~
10 ~~no other accessory buildings not used in support of a wireless~~
11 ~~telecommunications facility shall be constructed until the accessory~~
12 ~~building(s) in support of the wireless telecommunications facility is(are)~~
13 ~~removed.~~

14 I. **Footprint.** ~~The following restrictions on footprint shall apply to~~
15 ~~all wireless telecommunications facilities and co-location facilities: The~~
16 ~~overall footprint of each wireless telecommunications facility shall be as~~
17 ~~small as feasibly possible, to the satisfaction of the Staff Site Plan Review~~
18 ~~Committee.~~

19 ~~1. Ground-mounted towers, spires, and similar structures~~
20 ~~may be built and used provided that the overall footprint of the facility shall~~
21 ~~be as small as possible, and further provided that they shall not cover, in~~
22 ~~combination with any accessory building(s), shelter(s), or cabinet(s);~~
23 ~~ground lease area(s), or other above-ground equipment used in support of~~
24 ~~the operation of the wireless telecommunications facility, more than fifteen~~
25 ~~percent (15%) in area of the lot nor an area greater than one thousand six~~
26 ~~hundred (1,600) square feet. The footprints of multiple carriers on a parcel~~
27 ~~or lot shall be considered in aggregate and the total footprint shall be~~

1 ~~subject to this size limit.~~

2 ~~2. For roof/building-mounted facilities, no more than ten~~
3 ~~percent (10%) of the existing roof area of any building shall be occupied~~
4 ~~with wireless telecommunications antennas, equipment, or screening~~
5 ~~devices. In calculating this area, open-sided enclosures or screening~~
6 ~~devices shall be considered as if their open side(s) were closed to create a~~
7 ~~polygon.~~

8 J. Generators and Emergency Power. Diesel generators shall
9 ~~not be installed~~ are allowed as an emergency power source, although they
10 are discouraged, unless the use of electricity, natural gas, solar, wind, or
11 other renewable energy sources is not feasible. When a feasible alternative
12 technology for permanent on-site backup power becomes available (for
13 example, fuel cells) the Staff Site Plan Review Committee may require the
14 use of such technology in lieu of a diesel generator, unless the applicant
15 provides written documentation explaining why such an alternative is not
16 feasible. ~~If a diesel generator is proposed, the applicant shall provide~~
17 ~~written documentation explaining why the installation of these other options~~
18 ~~is not feasible.~~

19 K. Ground Lease Areas Enclosures. If equipment appurtenant to
20 a facility is to be located in a ground lease area, the lease area shall be
21 ~~surrounded~~ enclosed by a CMU block wall, or other appropriate fence, to
22 the satisfaction of the Staff Site Plan Review Committee. The fence shall
23 be of a minimum height of six feet (~~6'~~) six inches (6'-6") in residential
24 districts, and eight feet (8') in other districts.

25
26 21.56.110 Performance standards for all wireless telecommunications
27 facilities and co-location facilities.
28

1 No use may be conducted in a manner that, in the determination of
2 the Director of Development Services, does not meet the performance
3 standards below.

4 A. Lighting. Wireless telecommunications facilities and co-
5 location facilities shall not be lighted or marked unless required by the
6 Federal Communications Commission (FCC), the Federal Aviation
7 Administration (FAA), or the California Public Utilities Commission (CPUC).

8 B. Licensing. The applicant or operator shall file, receive, and
9 maintain all necessary licenses and registrations from the Federal
10 Communications Commission (FCC), the California Public Utilities
11 Commission (CPUC) and any other applicable regulatory bodies prior to
12 initiating the operation of the wireless telecommunications facility. The
13 applicant shall supply the Department of Development Services with
14 evidence of these licenses and registrations prior to approval of a final
15 inspection. If any required license is ever revoked, the operator shall inform
16 the Department of Development Services of the revocation within ten (10)
17 days of receiving notice of such revocation.

18 C. Building Permit Required. Once a Conditional Use Permit or
19 other applicable entitlement is obtained, the applicant shall obtain a
20 building permit and shall build in accordance with the approved plans.

21 D. Power Connection. The project's final electrical inspection
22 and approval of connection to electrical power shall be dependent upon the
23 applicant obtaining a permanent and operable power connection.

24 E. Removal After End of Use. The wireless telecommunications
25 facility, and/or co-location facility, if present, and all equipment associated
26 therewith shall be removed in its entirety by the operator within ninety (90)
27 days of a FCC or CPUC license or registration revocation or the facility is
28

1 abandoned (per Section 21.56.020.A) or no longer needed, and the site
2 shall be restored to its pre-installation condition and re-vegetated to blend
3 in with the surrounding area. In the case of roof/building-mounted facilities,
4 all antennas, equipment, screening devices, support structures, cable runs,
5 and other appurtenant equipment shall be removed and the building shall
6 be restored to its original appearance to its pre-installation condition. The
7 owner or operator of the wireless telecommunications site shall notify the
8 Planning Bureau Department of Development Services upon abandonment
9 of the facility. Restoration and re-vegetation shall be completed within two
10 (2) months of removal of the facility; hence a maximum of five (5) months
11 from abandonment of the facility to completion of restoration.

12 F. Maintenance. Wireless telecommunications facilities and co-
13 location facilities shall be maintained by the permittee(s) and subsequent
14 owners in a manner that implements the visual resource protection
15 requirements of Section 21.56.040.B, Section 21.56.080, and Section
16 21.56.100 above (e.g., landscape maintenance and painting), as well as of
17 this Chapter and all other applicable zoning and development standards
18 set forth in Title 21, and all permit conditions of approval. Landscaping
19 maintenance shall be the responsibility of the property owner, who may
20 designate an agent, including the operator, to carry out this maintenance;

21 G. Noise. All construction and operation activities shall comply
22 with Chapter 8.80 (Noise Ordinance) of the Long Beach Municipal Code
23 and any applicable conditions of approval.

24 H. Use of Backup Power Sources. The use of diesel generators
25 or any other emergency backup power sources shall comply with Chapter
26 8.80 of the Long Beach Municipal Code (Noise Ordinance). The use of
27 backup power sources shall be limited to actual power-outage
28

1 emergencies and any operation necessary for testing and maintenance.

2 ~~I. Government Use of Facilities. If technically practical and~~
3 ~~without creating any interruption in commercial service caused by~~
4 ~~electromagnetic interference (EMI), floor space, tower space, array space,~~
5 ~~and rack space equipment in a wireless telecommunications facility shall~~
6 ~~be made available to the City of Long Beach or other requesting~~
7 ~~government agency for public safety communications use, subject to~~
8 ~~reasonable terms and conditions.~~

9 ~~J. I.~~ Within forty-five (45) days of commencement of operations,
10 the applicant for the wireless communications facility shall provide (at the
11 applicant's expense) the Development Services Department with a report,
12 prepared by a qualified expert, indicating that the actual radio frequency
13 emissions of the operating facility, measured at the property line or nearest
14 point of public access and in the direction of maximum radiation from each
15 antenna, is in compliance with the standards established by the Federal
16 Communications Commission. This report shall include emissions from all
17 co-location facilities, if any, at the site as well. ~~Such report shall be~~
18 ~~provided by the applicant to the City every three (3) years which period is~~
19 ~~to be calculated with reference to the date of the initial report. The~~
20 ~~applicant shall subsequently provide such report to the City within forty-five~~
21 ~~(45) days following any change in design, number of antennas, operation,~~
22 ~~or other significant change in circumstances, or when such a report is~~
23 ~~otherwise required by the FCC, to the satisfaction of the Director of~~
24 ~~Development Services.~~

25
26 21.56.120 Additional requirements and standards for wireless
27 telecommunications facilities and co-location facilities in the
28

1 coastal zone.

2 A. Location. New wireless telecommunications facilities shall not
3 be located between the first public highway and the sea or bay, unless no
4 feasible alternative exists, and the facility is not visible from a public
5 location, or will be attached to an existing structure in a manner that does
6 not significantly alter (in the determination of the Director of Development
7 Services-Staff Site Plan Review Committee) the exterior appearance of the
8 existing structure.

9 B. Local Coastal Program Requirements. New wireless
10 telecommunications facilities shall comply with all applicable policies,
11 standards, and regulations of the Local Coastal Program (LCP).

12 C. Coastal Permit Required. The necessary Coastal
13 Development Permit or Local Coastal Development Permit shall be
14 obtained.

15
16 21.56.130 Additional requirements and standards for wireless
17 telecommunications facilities and co-location facilities in the
18 public right-of-way.

19 A. Department of Development Services Review. The Director
20 of Public Works shall refer all applications for wireless telecommunications
21 facilities and co-location facilities in the public right-of-way to the
22 Department of Development Services for review. Upon Department of
23 Development Services approval of an application by the Department of
24 Development Services, the applicant shall obtain all necessary permits
25 from the Department of Public Works, and comply with all applicable Public
26 Works design standards requirements, prior to commencement of
27 construction.

28

1 B. ~~Applicability of Chapter 21.56. All provisions and~~
2 ~~requirements of Chapter 21.56 shall apply to development of new wireless~~
3 ~~telecommunications facilities and co-location facilities in the public right-of-~~
4 ~~way, except those concerning setbacks and other provisions that by their~~
5 ~~nature do not apply to the public right-of-way.~~

6 B. Permit Requirements.

7 1. New Facilities. Site Plan Review shall be
8 required for the initial construction and installation of all new wireless
9 telecommunications facilities in the public right-of-way.

10 2. Co-location Facilities. Applications for co-location
11 facilities in the public right-of-way shall be subject to the administrative
12 review requirement set forth in Section 21.56.070.B.2.

13 C. Development Standards

14 1. Location and Accommodation of Co-location.
15 Wireless telecommunications facilities in the public right-of-way shall
16 be subject to the location and accommodation of co-location
17 constraints set forth in Section 21.56.040.

18 2. Design Standards. Any pole to be installed in the
19 public right-of-way shall be disguised to resemble a utility pole to the
20 maximum extent possible. All antennas shall be screened behind a
21 screening device, which shall be painted to match the pole. Co-
22 location facilities shall be subject to the development and design
23 standards set forth in Section 21.56.080.A and B.

24 3. Height. For facilities proposing a new pole in the
25 public right-of-way, the height to the top of the highest element shall
26 not exceed the average height of utility poles on the same block as
27 the subject site by more than five (5) feet. Where no utility poles are
28

1 present, height shall be limited to fifty feet (50') above grade. In
2 cases of uncertainty, the Zoning Administrator shall have the
3 authority to determine which standard shall apply.

4 4. Equipment Location. All equipment appurtenant to a
5 wireless telecommunications facility or co-location facility in the public right-
6 of-way shall be mounted on a utility pole at least eight feet (8') above
7 grade, or shall be located in an equipment vault below grade, or shall be
8 located in an existing ground-mounted equipment cabinet, whenever
9 possible, to the satisfaction of the Staff Site Plan Review Committee. New
10 equipment mounted at grade, such as, but not limited to, meter pedestals
11 and equipment cabinets, is strongly discouraged. If the applicant proposes
12 to mount new equipment at grade, a written explanation shall be provided
13 describing why other mounting options are not feasible. However, vent
14 stacks shall be allowed at grade, provided that a minimum clearance of six
15 (6) feet is maintained between each vent stack and the nearest property
16 line wherever feasible.

17 ~~C. Equipment Location. All equipment appurtenant to a wireless~~
18 ~~telecommunications facility or co-location facility in the public right-of-way~~
19 ~~shall either be mounted on a utility pole at least eight feet (8') above grade,~~
20 ~~or shall be located in an equipment vault below grade. Equipment mounted~~
21 ~~at grade, such as, but not limited to, meter pedestals and equipment~~
22 ~~cabinets, shall be prohibited except that vent stacks shall be allowed at~~
23 ~~grade, provided that a minimum clearance of six (6) feet is maintained~~
24 ~~between each vent stack and the nearest property line.~~

25 D. Application Requirements. Wireless telecommunications
26 facilities and co-location facilities in the public right-of-way shall be subject
27 to the application requirements set forth in Sections 21.56.050 and
28 21.56.090, respectively.

1 E. Entitlement, Term, Renewal, and Expiration. Wireless
2 telecommunications facilities in the public right-of-way shall be subject to
3 the entitlement, term, renewal, and expiration requirements set forth in
4 Section 21.56.060, as applicable.

5 D- F. Indemnification. Every permittee of a Wireless
6 Telecommunications Facility in the public right of way shall defend,
7 indemnify, and hold harmless the City of Long Beach, its City Council,
8 officers, and employees to the maximum extent permitted by law, from any
9 loss or liability or damage, including expenses and costs, for bodily or
10 personal injury, and for property damage sustained by any person as a
11 result of the installation, use or maintenance of the applicant's Facility
12 subject to this Chapter.

13 E. G. Insurance. The permittee shall obtain, pay for and maintain,
14 in full force and effect through the term of the permit, an insurance policy or
15 policies that fully protects the City from claims and suits for bodily injury
16 and property damage. The insurance must be issued in the amount or
17 amounts, which the City Attorney or Risk Manager determines. The
18 insurance must afford coverage for the permittee or wireless provider's
19 use, operation and activity, vehicles, equipment, facility, representatives,
20 agents and employees, as determined by the City's Risk Manager. Before
21 issuance of any permit, the applicant shall furnish the City Risk Manager
22 certificates of insurance and endorsements, in the form satisfactory to the
23 City Attorney or the Risk Manager, evidencing the coverage required by
24 the City.

25 F. H. Repair of Public Right-of-Way. The permittee shall repair, at
26 its sole cost and expense, any damage including, but not limited to
27 subsidence, cracking, erosion, collapse, weakening, or loss of lateral
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1 support to the City streets, sidewalks, walks, curbs, gutters, trees,
2 parkways, or utility lines and systems, underground utility line and systems,
3 or sewer systems and sewer lines that result from any activities performed
4 in connection with the installation and/or maintenance of a Wireless
5 Telecommunications Facility in the public right of way. In the event the
6 permittee fails to complete said repair within the number of days stated on
7 a written notice by the Director of Public Works, the Director shall cause
8 said repair to be completed and shall invoice the permittee for all costs
9 incurred by City as a result of such repair.

10 G. I. City Changes to Public Right-of-Way. The permittee shall
11 modify, remove, or relocate its Wireless Telecommunications Facility, or
12 portion thereof, without cost or expense to the City, if and when made
13 necessary by any abandonment, change of grade, alignment or width of
14 any street, sidewalk or other public facility, including the construction,
15 maintenance, or operation of any other City underground or aboveground
16 facilities including but not limited to sewers, storm drains, conduits, gas,
17 water, electric or other utility systems, or pipes owned by City or any other
18 public agency. Said modification, removal, or relocation of a wireless
19 telecommunications facility shall be completed within ninety (90) days of
20 notification by City unless exigencies dictate a shorter period for removal or
21 relocation. In the event a wireless telecommunications facility is not
22 modified, removed, or relocated within said period of time, City may cause
23 the same to be done at the sole expense of applicant. Further, in the event
24 of an emergency, the City may modify, remove, or relocate wireless
25 telecommunications facilities without prior notice to applicant provided
26 applicant is notified within a reasonable period thereafter.

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21.56.140 Other provisions.

A. Temporary Wireless Telecommunication Facilities.

Installation, maintenance, or operation of any temporary wireless telecommunications site is prohibited except as necessary during a special event authorized by Chapter 5.60 of the LBMC, or during a government-declared emergency.

B. Illegal Facilities. Illegal wireless telecommunications facilities or co-location facilities have no vested rights and shall either be brought into legal conforming status in accordance with this Chapter and Title 21 of the Long Beach Municipal Code, or shall be removed.

~~C. Nonconforming Facilities. Notwithstanding Section 21.27.090 of the Long Beach Municipal Code, a nonconforming wireless telecommunications facility or co-location facility shall have no rights to be repaired or restored to a nonconforming state if the need for repairs or restoration is the result of fire, explosion, earthquake, imminent public hazard, act of terrorism, sabotage, vandalism, warfare or abatement of earthquake hazards in accordance with City regulations. The damaged facility shall be rebuilt in compliance with the provisions of this Chapter, or shall be removed.~~

~~D.~~ C. Modifications to Wireless Telecommunications Facilities. Any modification to a wireless telecommunications facility or co-location facility, including but not limited to replacement of antennas, installation of additional antennas, installation of additional equipment cabinets, installation of a backup generator, paint or camouflage changes, and other physical changes to the facility, shall require, at a minimum, an administrative approval, and, if necessary, a building permit from the Department of Development Services. Prior to issuance of any approval a

1 ~~building permit~~ for modification, the applicant shall submit an application ~~to~~
2 ~~the Department of Development Services~~ for an administrative review to
3 determine the compliance of the proposed modification ~~to the wireless~~
4 ~~telecommunication facility or co-location facility~~ with this Chapter and the
5 existing Conditional Use Permit or other entitlement. For sites not subject
6 to Section 21.56.130 (located in the public right-of-way), applications for
7 modification will be subject to the standards and procedures outlined set
8 forth for new wireless telecommunications facilities, ~~above~~ (as specified in
9 Sections 21.56.030 through 21.56.060), if any of the following apply:

10 1. No Conditional Use Permit was issued for the original
11 wireless telecommunications facility;

12 2. The Conditional Use Permit for the original wireless
13 telecommunications facility did not allow for future modification or the
14 extent of site improvements involved with the modification project (in this
15 case, an application for a modification to the approved Conditional Use
16 Permit, subject to Planning Commission review, may be substituted for a
17 new Conditional Use Permit); or

18 3. No environmental review was completed for the
19 location of the original wireless telecommunications facility that addressed
20 the environmental impacts of future modifications (in this case, an
21 application for a modification to the approved Conditional Use Permit,
22 subject to Planning Commission review, may be substituted for a new
23 Conditional Use Permit).

24 E. D. Peer Review.

25 1. The Director of Development Services is authorized to
26 retain on behalf of the City an independent technical expert to peer review
27 any application for a Wireless Telecommunications Facility Permit if
28

1 reasonably necessary, as determined by the Director. The review is
2 intended to be a review of technical aspects of the proposed Wireless
3 Telecommunications Facility and shall address all of the following:

- 4 a. Compliance with applicable radio frequency
5 emission standards;
- 6 b. Whether any requested exception is necessary
7 to close a significant gap in coverage, increase network capacity, or
8 maintain service quality and is the least intrusive means of doing so;
- 9 c. The accuracy and completeness of
10 submissions;
- 11 d. Technical demonstration of the unavailability of
12 alternative sites or configurations and/or coverage analysis;
- 13 e. The applicability of analysis techniques and
14 methodologies;
- 15 f. The validity of conclusions reached;
- 16 g. The compatibility of any required architectural
17 screening;
- 18 h. Technical data submitted by the applicant to
19 justify the proposed height of any new installation including monopoles or
20 roof/building mounted sites; and
- 21 i. Any specific technical issues designated by the
22 City.

23 F. E. Appeals.

24 1. Appeals from the decision(s) of the Director of
25 Development Services or designee, and the Staff Site Plan Review
26 Committee, shall be to the Planning Commission;

27 2. Appeals from the decision(s) of the Planning
28

1 Commission shall be to the City Council;

2 3. All appeals shall be in accordance with the provisions
3 of Title 21 related to Appeals.

4 ~~G. F.~~ Revocation. The Planning Commission may, after a duly
5 noticed public hearing, revoke, modify or suspend any Wireless
6 Telecommunications Permit on any one or more of the following grounds:

7 1. That the Wireless Telecommunications Permit was
8 obtained by fraud or misrepresentation;

9 2. That the Wireless Telecommunications Permit granted
10 is being, or within the recent past has been, exercised contrary to the terms
11 or conditions of such approval or in violation of any statute, ordinance, law
12 or regulation; or

13 3. That the use permitted by the Wireless
14 Telecommunications Permit is being, or within the recent past has been,
15 exercised so as to be detrimental to the public health or safety or as to
16 constitute a nuisance.

17 ~~H. G.~~ Findings. A Wireless Telecommunications Facility Permit may
18 be granted only if the following findings are made by the designated
19 reviewing body or person, in addition to any findings applicable under
20 Chapter 21.25:

21 1. The proposed Wireless Telecommunications Facility
22 has been designated to achieve compatibility with the community to the
23 maximum extent reasonably feasible;

24 2. ~~As An~~ alternative configuration will not increase
25 community compatibility or is not reasonably feasible;

26 3. Alternative locations on the site will not increase
27 community compatibility or are not reasonably feasible;

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1 4. The location of the Wireless Telecommunications
2 Facility on alternative sites will not increase community compatibility or is
3 not reasonably feasible;

4 5. The proposed facility is necessary to close a
5 significant gap in coverage, increase network capacity, or maintain service
6 quality, and is the least intrusive means of doing so;

7 6. The applicant has submitted a statement of its
8 willingness to allow other carriers wireless service providers to co-locate on
9 the proposed Wireless Telecommunications Facility wherever technically
10 and economically feasible and where co-location would not harm
11 community compatibility; and

12 7. Noise generated by equipment will not be excessive,
13 annoying nor be detrimental to the public health, safety, and welfare.

14 **I. H.** Transfer or Change of Ownership/Operator. Upon
15 assignment or transfer of an already approved Wireless
16 Telecommunications Facility or any rights under that permit, the owner
17 and/or current operator of the Facility shall within thirty (30) days of such
18 assignment or transfer provide written notification to the Director of
19 Development Services of the date of the transfer and the identity of the
20 transferee. The Director may require submission of any supporting
21 materials or documentation necessary to determine that the proposed use
22 is in compliance with the existing permit and all of its conditions including,
23 but not limited to, statements, photographs, plans, drawings, models, and
24 analysis by a State-licensed radio frequency engineer demonstrating
25 compliance with all applicable regulations and standards of the Federal
26 Telecommunications Commission and the California Public Utilities
27 Commission. If the Director determines that the proposed operation is not
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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
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Long Beach, CA 90802-4664

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consistent with the existing permit, the Director shall notify the applicant who may revise the application or apply for modification of the permit pursuant to the requirements of this Chapter.

21.56.150 Severability Clause.

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other article provisions or clauses or applications, and to this end the provisions and clauses of this ordinance are declared to be severable.

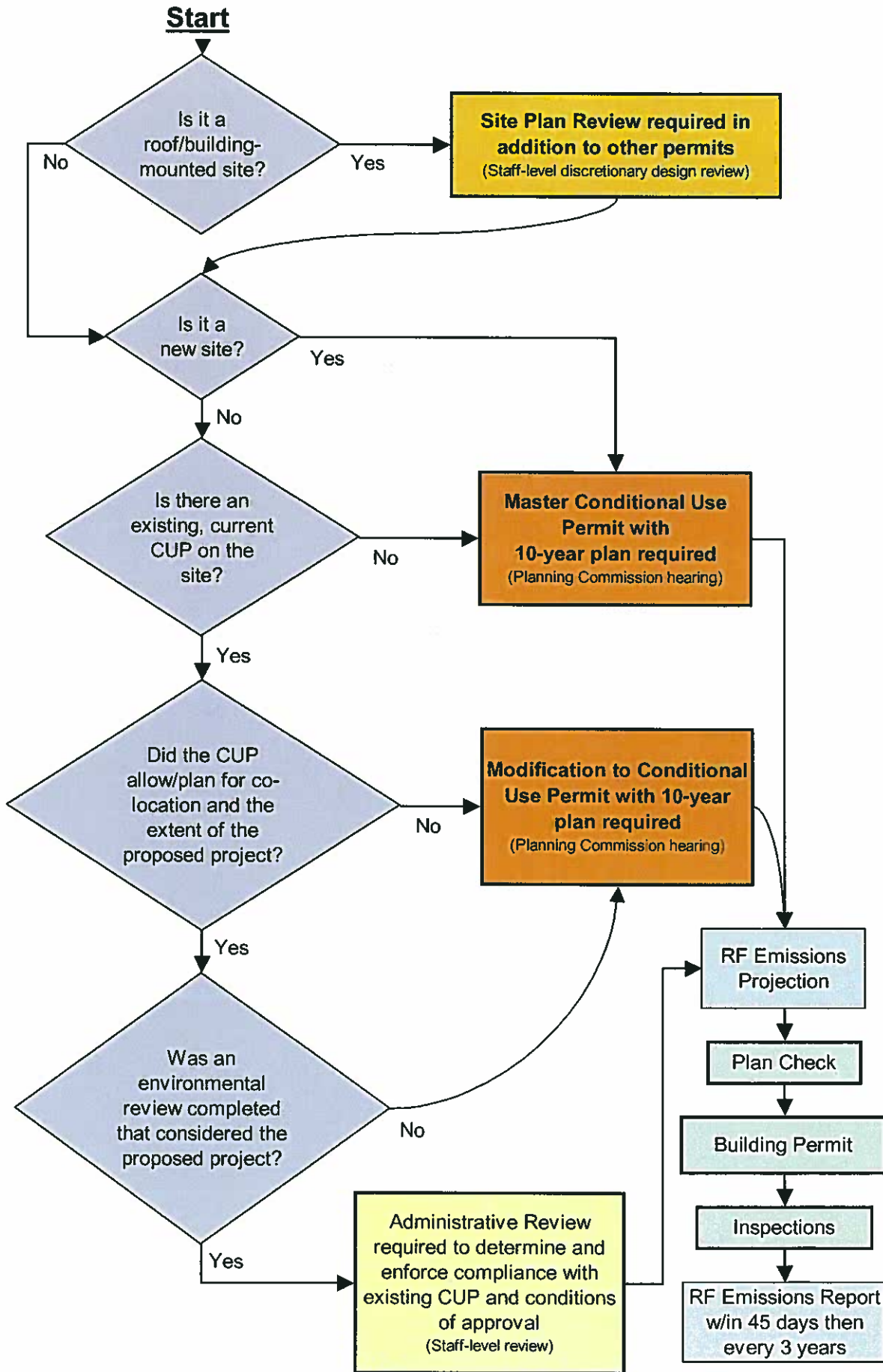
Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20__, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____



Comment Letter from Bill Garlin, Bluff Heights Neighborhood Assoc.

We recently had a complete surprise in the Bluff Heights neighborhood with the installation of a T-Mobile cell tower at 3233 Broadway. We understand the facts regarding this installation, which is currently underway, to be as follows:

- The Cell Tower Moratorium extension that the Long Beach City Council recently passed only applies to residential and institutional zones.
- The noted location is in a commercial zone.
- Roof-mounted sites in commercial zones do not currently require Planning Commission action and are handled at an administrative level.
- No public meetings or notifications are required under the current ordinance.
- The location noted is being constructed within the scope of the Development Services approved plans.
- The location is not within the boundaries of the Bluff Heights Historical District but is next door to property that is within the boundaries.
- This antenna location is next to a 3-unit apartment building and has an apartment unit within its boundaries.
- It is also across the alley from homes that are within the boundaries of the Bluff Heights Historical District.
- Development Services worked with the applicants for a number of months to find an aesthetically pleasing result.

In summary, there was zero resident or Bluff Heights Neighborhood Association (BHNA) input sought before locating this cell tower installation next door to apartments and single family residences. This lack of community involvement, especially on such a controversial public issue, is inappropriate and should not continue.

Fortunately we now understand that a new City-proposed ordinance regulating cell towers within federal guidelines is estimated to be at the Planning Commission in October. While it won't help us in the current unfortunate situation, it should help eliminate future such surprises. The background on the Long Beach cell tower situation was described in last Thursday's edition of the *Grunion Gazette* (article attached).

Below is the **BHNA general input** as this new ordinance moves forward to final adoption by the City Council:

- This is not about getting a new ordinance necessarily; it is about transparency & neighborhood involvement especially on issues like this that in the past have raised serious neighborhood concerns.
- The fact that this location and other such "commercially zoned" properties are directly adjacent to residential properties (across an alley for example...) needs to be taken into consideration in adopting future such ordinances.

As to the draft cell tower ordinance described in the article, **BHNA specifically comments as follows** [in brackets] about six of the key elements that were mentioned:

1. The draft ordinance calls for co-location (no new construction where there was not already an existing tower) of wireless telecommunications facilities.
[BHNA believes this provision a good idea because it could help eliminate the "clutter" of

too many antennas.]

2. Comprehensive reviews of environmental impacts of the cellular antennae.
[BHNA believes this could help ease residents concerns about the health and safety impacts of radio frequency (RF) emissions from such installations.]

3. The ordinance also stated that in addition to a Conditional Use Permit (CUP) for all new wireless facilities, those that are roof/building-mounted facilities would be subject to a site plan review.

[BHNA strongly believes this is **critical/required** element of any such ordinance in order to enhance public awareness of cell tower projects, foster openness and obtain necessary neighborhood input.]

4. New facilities may not be located in residential or institutional zoning districts unless the applicant demonstrated through evidence that a review had been conducted of other options with less environmental impact.

[BHNA does not believe that such installations belong in residential neighborhoods.]

5. Cellular providers would have to submit a radio frequency report describing the emissions of the proposed wireless telecommunications facility, and the anticipated increase in emissions associated with future co-location facilities. The provider then would have to pay a deposit for a third party peer review of the report.

[Again, a necessary component to help assure neighborhoods of the ongoing safe operation of cell tower installations and their RF emissions.]

6. Once cellular antennae are built, there would be a screening requirement stating that matching colors, materials and architectural styles in harmony with the existing structure's design must be used.

[BHNA believes this would minimize any visual "blight" caused by such antenna installations.]

We appreciate this opportunity to provide official BHNA input on this important topic involving our Bluff Heights neighborhood and the city of Long Beach.

If you have any questions regarding our input, please feel free to contact us.

Best regards,

Bill Garlin
Secretary, Bluff Heights Neighborhood Association
On behalf of the BHNA Board of Directors
info@bluffheights.org

Comment Letter from Susie O'Boyle, Legal Counsel for NextG Networks, Inc.

Please find below comments to the draft ordinance. I hope you are well.

1. 21.56.020. The definition of Co-Location does NOT include an attachment to an existing street light or utility pole.

There should be a carve out or section addressing DAS type installations in the public ROW.

2. 21.56.130 states that facilities placed in the ROW must also comply with all the other rules (to the extent they apply). This leaves a lot of discretion to staff regarding what may or may not apply when NG seeks to locate facilities there (e.g. one provision says that equipment must be vaulted unless placed on rooftop or inside existing building – does this mean NG would have to vault all equipment?). There should be more clarification regarding which parts of the ordinance would apply to carriers installing facilities in the ROW. If the other provisions of 21.56 do apply to NG, then it seems that the City would require NG to notify all other carriers of their plans to construct facilities in the next 10 years. This is not feasible. The City is also going to require carriers to note all other facilities that are in a 2.5 mile radius from the proposed location. This seems extensive for DAS that has a much smaller-reaching coverage footprint.

3. It would be good to look into more information regarding the proposed deposit for “3rd Party Peer Review”.

4. Under 21.56.130, equipment must be at least 8' above ground level or vaulted. We are assuming there can be no ground pedestals?

5. There is a type-o, p. 22, line 26 should be “extent” instead of “extend”.

6. If the City is going to limit installations in public ROW or residential areas, companies with CPCN's should be excluded from this restriction. The City should cite Section 7901 (State Law) which allows a CPCN holder access to the public ROW AND to attach and/or install poles and lines to provide telecommunications services.

7. The process should be administrative in nature as to avoid the potential for conflict or contradiction with state law.

Any provision or attempt to underground MUST be consistently applied to all entities in the public ROW, not just wireless. (IE the City cannot require vaulting only for wireless but not other utilities with equipment in the ROW.)

Let me know if you have any questions. Thank you.

Kind Regards,

Susie O'Boyle

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Long Beach Development Services
Attn: Current Planning Officer,
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Long Beach, CA 90802
email: scott.kinsey@longbeach.gov.

Dear Mr. Kinsey:

Re: Comments Regarding Proposed Long Beach Wireless Telecommunications Facilities (WTF) Ordinance – Chapter 21-56 (the "Proposed Ordinance")

For some time now, the City of Long Beach has been contemplating implementation of an ordinance that will govern the placement of wireless telecommunications facilities on private property and in the public rights-of-way within the Long Beach city limits. AT&T appreciates this opportunity to provide comments to the City on its proposed ordinance. AT&T has been providing communications service in Southern California for over a hundred years and its affiliate have been providing wireless telecommunications services since the late 1980's. AT&T is eager to work with the City in its efforts to address concerns about placement of wireless facilities.

There are some aspects of the Proposed Ordinance that merit comment and reconsideration, however. AT&T is most concerned about aspects of the proposal that would directly impact the ability of the wireless telecommunications industry to provide service to residents, businesses and visitors in Long Beach, who rely on cellphones and other wireless devices in their daily lives. As drafted, the wireless provisions do not just affect cellphones; wireless data of all kinds (including audio signals, video signals, computer files, e-mail and data of all kinds now use wireless transmission) will be affected.

I'll summarize below the applicable law and then briefly note concerns that AT&T has identified with some provisions of the Proposed Ordinance.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain authority that is exclusive and which preempts conflicting acts by state or local governments. At Section 332(c)(3)(7), the Act, while recognizing that local zoning authority is preserved, requires that local regulation not "unreasonably discriminate among providers of functionally equivalent services" and not "prohibit or have the effect of prohibiting the provision of personal wireless services."



California state law also impacts placement of communication facilities within the public rights-of-way. As you aware, wireless and wireline carriers, as "telephone corporations," have access rights to the public rights-of-way under Section 7901 of the California Public Utility Code. A telephone corporation enjoys a vested right under Section 7901 to construct "telephone lines" and "necessary fixtures" "along and upon any public road." California courts have long upheld this vested right to enter and use the public right-of-way. In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise "reasonable control as to the time, place and manner in which roads . . . are accessed." Section 7901.1(b) provides that any municipal regulations "at a minimum, be applied to all entities in an equivalent manner," thereby imposing a duty on the City to regulate in a non-discriminatory manner.

COMMENTS

1. Alternative Site Analysis – size of the search area

21.56.040 (A): When a carrier is proposing to locate a site within the R, I, or PD zoning districts, the city proposes to require the carrier to provide an alternative site analysis of all alternative sites within a 2 ½ mile radius of the selected candidate,. The Proposed Ordinance requires the carrier to prove, by a preponderance of the evidence, that no other site within the radius offers adequate service with less environmental impact. This proposed search area is excessive, for the reasons outlined below.

At the present time, many new sites are proposed to address network capacity issues rather than initial coverage needs. Often such capacity issues are specific to an intersection, selected building, or complex. If congestion in a carrier's network prevents or impedes delivery of voice or data traffic at these locations during certain times of the day, it can have the same effect as having no coverage at all. Locations as distant as 2 ½ miles from the location of the capacity issue would be extremely unlikely to address the problem.

It does not appear necessary to require every applicant to review sites within a 2 ½ mile radius. Analysis of locations outside the applicant's search ring will require expensive and time-consuming investigation work including rooftop analysis, structural analysis, initial contact with property owners for access, rent demands, etc. The appropriate area for an alternative site analysis should be determined on a case-by-case basis, based on the location proposed and the purpose for the proposed site.

2. Ten-Year Build Plan

21.56.050 (C): Regarding applications for proposed WTFs that will be co-locatable, the Proposed Ordinance requires carriers to provide a full description of the carrier's 10 year build-out plan including the full extent of the potential expansion of the site. The carrier would be required to contact all other carriers, determine their future plans and the potential for them to collocate at the proposed site some time within the 10-year window.



There are multiple issues with this section. First, given the very fluid and ever-changing nature of technology, especially wireless telecommunications, it would be extremely difficult to know what technology, equipment, customer needs, etc., might be in the future. Any ten year build plan would be very speculative in nature. Ten years ago, the potential for such devices as the iPhone and iPad were not known, and few might have foreseen the explosion in demand for data services in addition to voice. The increased data demands have affected growth and expansion plans tremendously. The potential for new devices and new technologies in the future could similarly impact any build-out plans. New equipment and technology could also impact the ability of a site to in fact be co-locatable, or could impact the number of potential collocations.

Additionally, asking carriers to approach and have provided other carriers' build-out plans and collocation needs will be very difficult to adhere to. Carriers are also competitors, and much of this information may be proprietary or information that a particular carrier is simply unwilling to provide to a competing wireless telecom service provider. If an area that is high priority for the applicant is lower priority for a competing carrier, that carrier may not provide the necessary information in a reasonable time, or may purposely delay providing information. The requirements of 21.56.050 (C) could impact an applicant's growth plans and customer service obligations by having the applicant rely on competitors to provide application material.

3. Collocation studies – Size of Search Ring

21.56.050 (D): A similar requirement of a 2 ½ mile radius to identify all existing WTFs and an explanation as to why collocation is not feasible. As discussed in Item 1 above, a search area of this size creates a burdensome and unnecessary requirement, given that applicants' search rings for the proposed site are likely to be significantly smaller than 2 ½ miles. The geographic area for this type of analysis should be determined on a case-by-case basis.

4. Ten-Year Term

21.56.060 (A): This section states that all entitlements provided by the city will only be valid for 10 years, after which the applicant must file for a renewal, pay additional fees, and provide an updated build-out plan. This ten-year term is inconsistent with requirements for other land uses.

5. Prohibition on Façade-Mounted Antennas; Location of Rooftop Antennas

21.56.060 (C)(1): This section calls for a prohibition of all façade-mounted antennas on buildings, and also states that antennas must be located as far away from the edge of the building. This proposed requirement is counter-productive, as it reduces the potential for collocation on existing buildings. It might make it impossible to provide service in some locations. It would be better to allow façade mounts but require stealthing in the form of painting or otherwise screening façade-mounted antennas.



The proposed requirement to move antennas away from the edge of rooftops also is problematic. Antennas require a line of sight to be able to work effectively. For that reason, to shift an antenna away from the edge of roof will require that the antenna be placed at an increased height in order to still be able to send and receive signals over the edge of the building to the street-level below.

6. Location of Equipment within Existing Buildings

21.56.060 (C)(2): This section requires carriers to locate all equipment inside existing buildings "whenever physically possible." This requirement does not take into account other issues such as future expansion space and the rent that the property owner will demand. An unreasonable rent demand may result in indoor equipment space being physically possible but financially unreasonable. Please note that federal law requires that financial factors must be considered when evaluating the feasibility of proposed sites and alternative locations.

Note also, that in some cases (e.g., a bank) it might be physically possible to locate the equipment within an existing building, but operational issues (particularly after-hours access) might make such location infeasible. AT&T suggests that equipment be located in existing buildings when technologically, operationally and financially feasible.

7. Design Standards – Grouping of

Section 21.56.100 (A)(4) provides that, to minimize adverse visual impact, applicants should group together buildings, shelters, cabinets, ground lease areas and other equipment to avoid spread on the parcel or lot. While this grouping might be advisable in some situations, such grouping also is likely to cause issues with setbacks and also may not be feasible based on lot size. This approach should be suggested and not required.

8. Height Limitations

Section 21.56.100(G)(1) provides in Residential, Institutional and Planned Development Residential/Institutional zones that monopoles and antennas shall not exceed 55' above grade. Is this provision intended to prevent location of antennas on buildings is higher than 55'? If so, this might eliminate the best, least intrusive, sites in some areas. Please note also that this height limitation makes it much less likely that other carriers will be able to collocate on the monopole or other location, due to the need for spatial separation of facilities.

9. Height Limitations in Public Rights-of-Way

Section 21.56.100(G)(2) provides for facilities located in the public right-of-way that the height shall not be higher than the nearest utility pole. Often, the site with the lowest impact in an area might involve location on a modest extension of a single utility pole. To impose this blanket height restriction may eliminate the best way to provide service in an area. There does not appear to be any aesthetic, safety or other allowable basis for imposing this limit. Extensions on utility poles should be allowable upon a consideration of impact to the surrounding area and other service options.

10. Height Limitations on Certain Rooftop Structures.



Section 21.56.100(G)(3) requires in the R-1, R-2, or R-3 districts that no rooftop site shall exceed the maximum height of the structure allowed in the district. This will have the effect of prohibiting rooftop installations in many, if not most, locations in these areas as most buildings are built to the maximum height. Depending on what other options are available to serve those areas, this requirement may be subject to challenge under the Telecommunications Act. In any event, it will serve as an impediment to use of rooftop locations, which often are the lowest impact means of addressing gaps in coverage. AT&T recommends allowing additional height to accommodate antennas in these locations.

11. Accessory Buildings.

21.56.100 (H): This section on "Accessory Buildings" is confusing; it appears to state that if the property owner has an "accessory building" (such as a personal equipment shed, etc?) on his land, then the carrier would not be allowed to place its own equipment shelter on site unless the property owner's building was first removed. Similarly, it seems to require that if a WTF equipment shelter is already on site, then the landlord would be unable to build his/her own "accessory building" unless the WTF shelter was first removed. The purpose of this section is unclear: it seems to either a WTF shelter or a personal accessory building on site, but not both at the same time. It would be most helpful to have this provision clarified. For example, if there are two buildings on a parcel, would the applicant be required to demolish one of the buildings to put its equipment on it? Depending on how this provision is interpreted, it could restrict the use of potentially good and workable sites in the R, I, or PD zoning districts.

12. Footprint

21.56.100 (I): This section restricting the footprint of a WTF is counter-productive in that the city is trying to push for more co-locations, while at the same time restricting the size of the WTF that the initial carrier builds on both raw land and rooftop locations. The limitation of 10% for roof-mounted facilities is particularly troubling, as it is not based on the structural integrity of the facility and does not consider whether any of the facilities so located are visible from the street or elsewhere. This provision is likely to limit collocations and may have the effect of prohibiting service in some areas.

13. Facilities in the Public Rights-of-Way

Section 21.56.130 states that all requirements of Section 21.56 apply to placement of WTFs in Public rights-of-way except for "setbacks and other provisions that by their nature do not apply to public rights-of-way." The vague nature of the exception makes it difficult to know which provisions of Section 21.56 will be deemed to apply to WTFs in Public Rights-of-Way.

In any event, it appears that a number of the requirements in Section 21.56, if applied to WTFs proposed for public rights-of-way, would be contrary to the regime established by CPUC § 7901. It could be reasonably inferred from application of these requirements that the City believes it can substitute its judgment for that of an applicant as to whether facilities are required and which facilities should be installed. AT&T maintains that a city may not regulate a carrier's determination of its technical needs or to purport to control the means selected to meet those



needs. If applied to WTFs proposed for public rights-of-way, AT&T believes that such requirements would be beyond the "time, place and manner" authority reserved to cities under § 7901.1.

14. Modifications, Removals, and Relocations of WTFs in Public Rights-of-Way – Prohibition on Temporary Facilities

The Proposed Ordinance's approach to modifications, removals, and relocations of existing WTFs is problematic for at least two reasons. First, 21.56.130 (G), as currently drafted only provides for a 90-day window for a complete relocation of an existing site. A 90-day noticing requirement by the city is not enough time for a carrier to be able to go through all the steps of relocating a site, while also having to adhere to the new Ordinance and all of its demands.

This provision should expressly allow the use of temporary facilities in the event that the permanent replacement facilities are not ready on schedule. Temporary facilities are expressly prohibited by the Proposed Ordinance in 21.56.140 (A) (unless needed for a "Special Event" or necessary during a government-declared emergency). This ban should be lifted or modified to allow temporary facilities while working on any relocation of an existing site.

15. Non-Conforming Facilities – Damage Due to Natural Disaster and other causes outside of Carrier's Control.

According to 21.56.140 (C), a WTF that existed prior to the new Ordinance (i.e., a Non-Conforming WTF or collocation facility) cannot be repaired or restored to its "non-conforming" (existing) state if it is damaged by a natural disaster, explosion, vandalism, warfare, etc. If this provision is adopted as it is currently written, if a WTF is damaged or destroyed by such an event, the Ordinance would require that the WTF be rebuilt in full compliance with the new Ordinance. This would mean a carrier must successfully complete the extensive application and review process before restoring service that exists today.

This section risks the public's safety by essentially causing a non-functioning WTF to remain shut down for an extended period of time. When a future earthquake or other damaging event affects the city of Long Beach and causes cellular service to go down, it would be in the public's best interest to have all cell sites restored immediately back to their prior existing condition. This would allow for the site and communication services to be restored quickly. Asking the carrier to have to go through the full permitting process to restore a damaged site could mean that the site remains shut down for several months, and potentially longer. Long Beach is a highly populated city with many cell sites, and a significant earthquake or similar event could cause damage to many sites, not just for AT&T but for other carriers as well. Note that many city services including police and fire, use existing WTFs for their communication needs as well. Temporary facilities, while a necessary part of any short-term emergency management program, are not likely to be sufficient in the event of major damage to sites in the city.



This provision should be modified to allow for reconstruction and operation of Non-Conforming WTFs in the event of damage due to natural disasters or other causes outside of the control of the carriers.

16. Performance Standards – FCC Compliance Reports.

Section 21.56.110(J) requires the carrier to provide an EMF report every three years, even if nothing changed on the site. Establishment of, and compliance with, Radio Frequency Emission standards is exclusively within the province of the FCC. The City does not have independent authority to require carriers to engage in emissions testing. AT&T complies with FCC requirements at its sites. If there are changes to equipment or operations at a site that require FCC filings, AT&T will make those filings available to the City. There is no reason to require a report otherwise and the City has no authority to order carriers to provide such reports

This letter summarizes addresses some major concerns that AT&T has in connection with the Proposed Ordinance. Of course, we are keen to work with the City to find solutions to the issues relating to the placement of WTFs in the City. We hope you find these comments helpful. We welcome the opportunity to work with city staff to discuss our legal and practical concerns and to develop solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael van Eckhardt".

Michael van Eckhardt
AT&T
General Attorney

ec: Creasie James
Karime Bradvica

September 28, 2010

Sent Via EmailDerek Burnham
Planning Officer
City of Long Beach
Civic Center Plaza
333 West Ocean Boulevard
Long Beach, CA 90802**Re: Draft Ordinance Relating to Wireless Telecommunications Facilities**

Dear Mr. Burnham,

As a follow-up to our comments at the August 19 Study Session before the Planning Commission and on behalf of our client Clearwire, we have prepared the following letter outlining a number of specific concerns that Clearwire has with respect to the draft ordinance relating to Wireless Telecommunications Facilities ("Draft Ordinance"). For ease of review, our comments below correspond to the order of sections in the Draft Ordinance, and we have summarized Clearwire's key concerns below.

We would be happy to meet with you in person to discuss these issues. If you have any questions or would like to discuss in the meantime, please do not hesitate to call.

I. Key Concerns

As explained below, Clearwire is particularly concerned about a number of provisions in the Draft Ordinance that would severely restrict its ability to install wireless facilities in residential areas.

As you know, Clearwire is in the process of constructing its wireless broadband network in Long Beach and other cities in Southern California. Clearwire plans to offer a robust suite of advanced high-speed wireless broadband services to business customers and consumers, many of whom will expect to be able to use their broadband services in their homes. To provide service to these customers' residences, Clearwire must be able to construct sites in residential areas. As drafted, the Draft Ordinance makes the construction of such sites practically impossible, even if the sites are screened from view or co-located with existing wireless facilities.

Clearwire's concern about the extremely restrictive provisions in the Draft Ordinance is heightened by the fact that, as became apparent at the August 19 Study Session before the Planning Commission, the key driver for such restrictions is the City's concern about exposing residents to RF emissions—an area in which the federal government has preempted state and local regulation.

Another key concern relates to provisions that increase the level of difficulty and cost of installing facilities on existing rooftops or other structures. As part of its "Purpose and [O]bjectives," the Draft Ordinance includes the express purpose of "requir[ing], to the maximum extent feasible, the co-location of wireless telecommunications facilities"¹ and "minimiz[ing] displeasing aesthetics."² Nevertheless, the Draft Ordinance would, in a number of instances, require multiple discretionary permits and approvals for co-located facilities (including Conditional Use Permits and design review - *see* Section IV., below). Similarly, the Draft Ordinance does not offer any streamlined permitting process for screened or stealthed facilities. Finally, the Draft Ordinance imposes a number of stringent requirements with respect to rooftop installations that could, in fact, discourage their use. These provisions should be revised to simplify permitting and design requirements to encourage the use of such sites consistent with the stated purpose and objectives of the Draft Ordinance.

The Draft Ordinance's "Purpose and [O]bjectives" also expressly provides that the City intends to "establish a fair and efficient process for review and approval of applications"³ and "enhanc[e] the ability of the providers of telecommunications services to provide such services to the City quickly, effectively, and efficiently."⁴ The current version of the Draft Ordinance is lengthy and complex and, as noted above, creates onerous permit and design requirements for even low-impact sites. In addition, the Draft Ordinance requires several "administrative" requirements that increase the cost and time of obtaining and maintaining permits. Of particular concern are the Draft Ordinance's requirements to consult with all other wireless providers and prepare a 10-year plan for the facility⁵; the requirement to provide ongoing RF emission reporting every three years regardless of whether there has been equipment or operational changes to the site that would impact RF emissions,⁶ and peer review requirements.

II. Definition of "Co-location" [Section 21.56.020.B.]

The Draft Ordinance limits the definition of "co-location" of roof-mounted facilities to those "immediately adjacent" to an existing facility. To encourage co-location, especially on

¹ Section 21.56.010.B.

² Section 21.56.010.E.

³ Section 21.56.010.C.

⁴ Section 21.56.010.F.

⁵ Section 21.56.050.C. *See* Section VIII., below.

⁶ Section 21.56.110.J.

rooftops which can have a lesser visual impact than ground-mounted facilities, the City should broaden the definition to include all facilities on the same building or group of buildings.

Proposed revision: B. "Co-location" means the placement or installation of wireless telecommunication facilities, including antennas and related equipment on an existing wireless telecommunications facility, in the case of monopoles, or ~~immediately adjacent to a wireless telecommunications facility~~ on the same building or group of buildings, in the case of roof/building-mounted sites.

III. Definition of "Roof/building mounted site" [Section 21.56.020.F.]

The definition does not address equipment shelters necessary to house accessory equipment.

Proposed revision: F. "Roof/building-mounted site" means any wireless telecommunications facility located on a rooftop or building, having no support structure such as a monopole or other type of tower. "Roof/building-mounted site" also includes any related equipment shelters on the roof or ground.

IV. Level of review required for roof/building-mounted facilities, co-locations, screened sites, and modifications [Sections 21.56.030.B., 21.56.070.B.1., 21.56.070.B.2., 21.56.090, and 21.56.140.D.]

Clearwire understands that the City wishes to encourage carriers to site facilities on existing structures and to streamline the permitting process for such facilities. However, the Draft Ordinance does not appear to accomplish these objectives. For example, in a number of instances, the Draft Ordinance would require a Conditional Use Permit for roof/building-mounted sites and co-location facilities. In addition, there does not appear to be any streamlined process for fully screened sites or for modifications to existing facilities. If the City wishes to encourage the use of existing buildings and co-locations (as is provided in the "Purpose and [O]bjectives" of the Ordinance, it should permit these types of facilities via administrative review.⁷ We would be happy to work with you to craft specific language to streamline the permitting process for such low-impact sites.

⁷ "Stealthed" facilities should especially qualify for administrative review and approval.

V. **More restrictive requirements beyond the minimum standards set forth in the proposed ordinance may be imposed as a condition of Conditional Use Permit approval. [Section 21.56.040]**

This language injects uncertainty and unreasonable discretion into the site development and application process. Carriers must be provided objective criteria to use in guiding network development and site selection.

Proposed revision: All new wireless telecommunications facilities shall meet the following minimum standards. ~~Where appropriate, more restrictive requirements may be imposed as a condition of Conditional Use Permit approval.~~

VI. **Sites not allowed in Residential or Institutional zoning districts absent a “demonstration that a review has been conducted of other options with less environmental impact and no other sites or combination of sites allows feasible service or adequate capacity and coverage.” [Sections 21.56.040.A. and 21.56.050.G.]**

The standard set forth in Sections 21.56.040.A. and 21.56.050.G.—specifically, “that there are no feasible, alternative non-residential, non-institutional sites or combination of non-residential, non-institutional sites available [within 2.5 miles] to eliminate or substantially reduce significant gaps” in coverage or capacity—would make it extremely difficult to site any wireless facilities in residential zones. This standard could be interpreted as requiring proof that none of an infinite amount of possible siting options are feasible. This is an extremely high hurdle and one that the Ninth Circuit has recently rejected in a case involving the City of Anacortes, holding that multi-site solutions are not a suitable alternative “least intrusive means” of filling a significant gap in coverage where a single-site solution exists.⁸

Additionally, the requirement in Section 21.56.050.D. to identify and provide alternative site analysis for existing wireless communications facilities within a two and one-half (2.5) mile radius of the proposed facility fails to recognize differences in coverage and spectrum allocation for the various types of wireless providers. For example, on average, Clearwire’s sites in the Long Beach area provide service in an approximately one-half (.5) mile radius. Requiring all carriers to submit such broad alternative analysis unnecessarily increases the costs and work associated with preparing and reviewing applications.⁹

⁸ *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 990 (9th Cir. 2009) (“[T]wo-site solution may not be feasible because it would require two sites be constructed instead of one, which would raise both the impacts of the [wireless communications facilities] on the community as well as the construction and operational costs that [carrier] would have to bear.”)

⁹ Additionally, it is unclear what is meant by the phrase “environmental impact.” In other sections, the phrase is used along with “aesthetic impact” (e.g. “environmental and aesthetic impacts”). This implies that “environmental

Clearwire submits that this section must be substantially re-written to focus on concerns that are legally within the purview of the City (such as aesthetics) and to provide carriers with a reasonable opportunity to site facilities in residential zones. Specifically, Clearwire asserts that sites should be permitted within residential zones provided there is a demonstrated need for such sites and the aesthetic impact of the sites are mitigated to the maximum extent feasible. Clearwire offers some possible proposed language below but would be pleased to meet with the City to discuss other options, including perhaps limiting the installation of wireless facilities to multi-family dwellings (e.g. apartment buildings) or institutional uses (e.g. churches) in residential areas.

Proposed revision: Section 21.56.040.A., "Development and design standards for new wireless telecommunications facilities that are not co-location facilities." Location. New wireless telecommunications facilities shall not be located in Residential (R) or Institutional (I) zoning districts, or Residential/Institutional Planned Development (PD) Districts (as defined in 21.56.020.H.), unless the applicant demonstrates, by a preponderance of the evidence, that (1) there is a need for a site in such areas to substantially reduce significant gaps in the applicant service provider's coverage or network capacity; (2) a reasonable review has been conducted of other single site alternatives outside the specified districts; and (3) the aesthetic impact of the site has been mitigated to the maximum extent reasonably feasible through the use of screening, landscaping or other architectural solutions. ~~a review has been conducted of other options with less environmental impact, and no other sites or combination of sites allows feasible service or adequate capacity and coverage. This review shall include, but is not limited to, identification of alternative site(s) within two and one half (2.5) miles of the proposed facility.~~ See Section 21.56.050 for additional application requirements.

Section 21.56.050.G., "Application requirements for new wireless telecommunications facilities that are not co-location facilities." Applications for the establishment of new wireless telecommunications facilities inside Residential (R) or Institutional (I) zoning districts, Residential/Institutional Planned Development (PD) Districts (as defined in 21.56.020.H.), and residential or

impact" refers to something other than aesthetic impacts, though the object of reference is unclear. If "environmental impact" is code for concerns regarding RF emissions, such considerations are legally impermissible.

~~institutional General Plan Land Use Districts (LUDs) shall demonstrate, by a preponderance of the evidence, that (1) there is a need for a site in such areas to substantially reduce significant gaps in the applicant service provider's coverage or network capacity; (2) a reasonable review has been conducted of other single site alternatives outside the specified districts; and (3) the aesthetic impact of the site has been mitigated to the maximum extent reasonably feasible through the use of screening, landscaping or other architectural solutions. be accompanied by a detailed alternatives analysis that demonstrates that there are no feasible alternative non-residential, non-institutional sites or combination of non-residential, non-institutional sites available to eliminate or substantially reduce significant gaps in the applicant service provider's coverage or network capacity.~~

VII. Except where aesthetically inappropriate, new wireless communications facilities shall be constructed so as to accommodate co-location. [Section 21.56.040.C.]

The phrase "aesthetically inappropriate" is unreasonable vague, and its lay interpretation could create a very strict and unduly burdensome standard. The blanket application of this type of standard across all zones—including residential and industrial—also seems inapposite.

VIII. Description of ten-year build-out of site [Section 21.56.050]

This requirement is extremely onerous without providing any practical value. There are obvious disincentives for carriers to share detailed information on future network deployment plans, and, in any event, carriers are generally not able to meaningfully predict usage patterns and technological trends beyond a five-year planning horizon (at most). In the end, this requirement would generate costs for applicants (in preparing the description) and the City (in analyzing the description) while providing little or no value.

IX. Requirement to install equipment inside an existing building "whenever physically possible" [Section 21.56.100.C.2.a.]

This requirement, read literally, could require installation of equipment inside existing buildings in virtually all cases, regardless of cost or whether such installation is functionally or operationally feasible.

Proposed revision: All equipment appurtenant to a wireless telecommunications site shall be located inside an existing building whenever physically reasonable possible.

X. Screening required “where physically possible,” and equipment must be “totally concealed” [Section 21.56.100.C.3.]

The requirement to “totally conceal” all antennas and related components from virtually all vantage points is an extremely high standard that is likely unworkable for many technologies (including critical technologies such as microwave). The “safety valve” set forth in Section 21.56.100.C.3.e. should be modified to take into account technological limitations and the character of surrounding areas. Also, completely concealed sites should be subject to the same streamlined process as co-locations.¹⁰

Proposed revision: Section 21.56.100.C.3.e., “Exemption from screening.” At the discretion of the Director of Development Services, part or all of a proposed roof/building-mounted wireless telecommunications facility or co-location facility may be exempted from screening requirements (a) if the best feasible screening design would result in greater negative visual impacts than if part or all of the proposed installation were unscreened; or (b) if screening would interfere with network performance or is otherwise not feasible.

XI. Footprint of all facilities at a particular site [Section 21.56.100.I.]

The Draft Ordinance should encourage carriers to consider all possible site locations, focusing on providing the best possible service to customers and installing facilities with the least amount of visual impact. To do so, the Draft Ordinance should allow carriers to select site locations based on case-by-case analysis and best-fit design solutions.

Arbitrary footprint restrictions could frustrate development of sites at optimal locations, thus requiring an increase in the number of total sites and, in turn, an increase in cumulative aesthetic impacts (taking into account all sites). For example, an arbitrary restriction on rooftop facilities’ footprints could require a design with a greater visual impact (e.g. a carrier may be forced to install a taller structure to accommodate the facility and supporting equipment, rather than a shorter and more architecturally integrated structure with a larger footprint).

Standard “one-size-fits-all” footprint constraints could also inhibit co-location possibilities (and, in fact, seems inconsistent with the co-location requirements in the Draft Ordinance).

Proposed revision: 1. Ground-mounted towers, spires and similar structures may be built and used provided that the overall footprint

¹⁰ See Section III., above.

of the facility shall be as small as reasonably possible, and further provided ~~... subject to this size limit.~~

~~2. For roof/building-mounted facilities ... enclosed to create a polygon.~~

XII. Emergency Generators [Section 21.56.100.J.]

Serious reliability concerns are raised by eliminating the installation of emergency diesel generators, and the alternatives (solar, natural gas, etc.) are not feasible.

XIII. Installation of CMU Block Wall [Section 21.56.100.K.]

The requirement to utilize CMU block walls is overly restrictive. Discretion should be allowed for different types of walls, as appropriate for a specific site.

Proposed revision: K. Ground Lease Areas. If equipment appurtenant to a facility is to be located in a ground lease area, the lease area shall be enclosed ~~surrounded~~ by a CMU block or other appropriate wall of a minimum height of six feet (6')-six inches (6") in residential districts, and eight feet (8') in other districts.

XIV. Government Use of Facilities [Section 21.56.110.I.]

Clarification should be made that accommodations for government use of space will not be required when such accommodations would violate private lease agreements associated with the space and/or interfere with other carriers. Additionally, the Draft Ordinance should provide that such accommodation will be made at reasonable rates, terms and conditions.

XV. Periodic RF Report [Section 21.56.110.J.]

It appears that the City wishes to confirm that sites comply with Federal Communications Commission guidelines. Clearwire does not object to providing an initial report demonstrating compliance. However, additional reports every three years should not be required absent a significant change in design, number of antennas, operation or circumstances.

XVI. Equipment Vaulting for Facilities in Public Right-of-Way [Section 21.56.130.C.]

For safety, reliability, and in the interest of minimizing visual impacts, wireless carriers should be allowed to install equipment in existing ground-mounted equipment cabinets where technically feasible.

Equipment in underground structures takes much longer to access in event of a service outage. If repair or maintenance is required, complex and time-consuming safety precautions for vault entry significantly increase the time it takes to restore service. Equipment degradation is also more likely to occur below-ground because equipment is especially susceptible to corrosion. The initial construction and subsequent entry into underground vaults are also more likely to result in traffic disruptions and unnecessary construction activities (sidewalk removal and restoration, etc.).

XVII. Temporary Wireless Communication Facilities prohibited [Section 21.56.140.A.]

Temporary facilities should be permitted for a limited duration to allow carriers to maintain, update, repair and replace existing facilities.

XVIII. Right to repair or restore nonconforming facility damaged as a result of unforeseeable and unpreventable event [Section 21.56.140.C.]

This language is inequitable and raises serious concerns regarding discriminatory takings of vested rights in facilities. This section should be removed from the Draft Ordinance.

XIX. Prohibition against modification of wireless communications facilities [Section 21.56.140.D.]

The Draft Ordinance should be modified to allow reasonable maintenance, repairs and replacement of existing facilities without requiring a building permit. The City should encourage carriers to maintain existing facilities in optimal operational, structural and aesthetic condition. Requiring a building permit for any modification (including "paint" and "other physical changes to the facility") would, in fact, inhibit carriers from doing so. Further, the Draft Ordinance should also permit one-for-one replacement of similarly sized antennas to further encourage the continued use of existing sites (as opposed to the construction of additional new sites) as technology improves.

XX. Retention of independent technical expert [Section 21.56.140.E.]

Wireless facilities represent a substantial investment for wireless carriers, and carriers would not expend the costs necessary to build a facility without a demonstrated need. The retention of an independent expert at the carrier's expense is duplicative and wasteful, since the carrier has already performed the analysis necessary to determine the need for a facility.

XXI. Least intrusive means of closing significant gap in coverage [Sections 21.56.140.H.5.]

The standard should be modified to take into account other legitimate reasons that sites are constructed in addition to closing gaps in coverage, e.g. capacity requirements.

Derek Burnham
September 28, 2010
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Proposed revision: The proposed facility is necessary to close a significant gap in coverage, increase capacity or maintain service quality and is the least intrusive means of doing so.

CONCLUSION

Again, Clearwire welcomes the opportunity to discuss these and other concerns with you in the weeks ahead.

Very truly yours,


Suzanne Toller
Davis Wright Tremaine LLP

cc: Michael J. Mais, City Attorney



CITY OF LONG BEACH NOTICE OF EXEMPTION

DEPARTMENT OF DEVELOPMENT SERVICES
333 W. OCEAN BLVD., 5TH FLOOR, LONG BEACH, CA 90802
(562) 570-6194 Fax: (562) 570-6068
lbd.s.longbeach.gov

TO: Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: Department of Development Services
333 W. Ocean Blvd, 5th Floor
Long Beach, CA 90802

L.A. County Clerk
Environmental Fillings
12400 E. Imperial Hwy. 2nd Floor, Room 2001
Norwalk, CA 90650

Categorical Exemption CE-10-064

Project Location/Address: Citywide

Project/Activity Description: _____

Zoning Amendment to modify the City's regulations pertaining to wireless telecommunications facilities Citywide.

Public Agency Approving Project: City of Long Beach, Los Angeles County, California

Applicant Name: City of Long Beach Dept. of Development Services

Mailing Address: 333 W. Ocean Blvd., 5th Floor, Long Beach, CA 90802

Phone Number: (562) 570-6194 Applicant Signature: [Signature]

BELOW THIS LINE FOR STAFF USE ONLY

Application Number: 1004-27 Planner's Initials: SK

Required Permits: Zoning Amendment

THE ABOVE PROJECT HAS BEEN FOUND TO BE EXEMPT FROM CEQA IN ACCORDANCE WITH STATE GUIDELINES SECTION 15305, Class 5, Minor Alterations in
Land Use Limitations

Statement of support for this finding: minor modification of City's land use regulations for wireless telecommunications facilities

Contact Person: Craig Chalfant

Contact Phone: 562-570-6369

Signature: [Signature]

Date: 8/3/10