

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**ORDINANCE NO. 2023-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF CARMEL-BY-THE-SEA AMENDING THE CARMEL MUNICIPAL CODE (CMC) TITLE 17 (ZONING) BY REPEALING AND REPLACING CHAPTER 17.46 (TELECOMMUNICATIONS AND WIRELESS FACILITIES) AND MAKING CONFORMING AMENDMENTS TO SECTIONS [TBD]; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Carmel-by-the-Sea currently regulates the placement of wireless facilities throughout the City under Title 17, Chapter 17.46 of the Municipal Code; and

**WHEREAS**, Chapter 17.46 was last amended in 2004; and

**WHEREAS**, there have been significant changes in state and federal law affecting local authority over wireless siting since Chapter 17.46 was last amended, including the passage of new federal laws and state laws, the adoption of new Federal Communications Commission regulations and orders, the amendment of California Public Utility Commission orders related to utility infrastructure, and various judicial decisions interpreting those laws and regulations; and

**WHEREAS**, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction, and modification of personal wireless service facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

**WHEREAS**, Carmel-by-the-Sea has made longstanding and sustained efforts to preserve its distinct “village in a forest, by the sea” character, the natural beauty of its shoreline environment, and its charm as a popular visitor destination, by not allowing incompatible development that degrades the visual and economic value of adjoining properties, especially in residential areas; and

**WHEREAS**, Carmel-by-the-Sea’s topography, forested nature, location partially within and partially adjacent to California’s High Fire-Threat District (HFTD), and narrow streets, with few gutters or sidewalks or streetlights, gives rise to many unique concerns and situations relating to fire safety, traffic circulation, parking and pedestrian safety; and

**WHEREAS**, if not adequately regulated, the installation of personal wireless services facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards; negative impacts to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging; and

**WHEREAS**, the City therefore intends to exercise its powers to regulate personal wireless service facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique scenic quality of Carmel-by-the-Sea, and protect the character of the City's residential neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future; and

**WHEREAS**, the Planning Commission conducted a duly noticed public workshop on a draft of the ordinance, design guidelines, and application forms on [TBD] to receive public feedback; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the proposed ordinance, design guidelines, and application forms on [TBD] at which it took public testimony, held a discussion, and voted to adopt the design guidelines and application forms, and to recommend that City Council adopt of the proposed code amendments (Resolution No. [redacted]);

**WHEREAS**, on \_\_\_\_\_, 2023 the City Council held a duly noticed public hearing, etc;

**WHEREAS**, the City determined this ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines; and

**WHEREAS**, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 et seq.)

**SECTION 1. CEQA Review.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In

order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Monterey within five working days of the passage and adoption of the Ordinance.

**SECTION 2.** Repeal and Replacement of Chapter 17.46. Chapter 17.46 of Title 17 of the Carmel-by-the-Sea Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 17.46  
TELECOMMUNICATIONS AND WIRELESS FACILITIES**

Sections:

- 17.46.010 Purpose and Findings.**
- 17.46.020 Definitions.**
- 17.46.030 Applicability.**
- 17.46.040 General Development Standards.**
- 17.46.050 Wireless Application Types and Submittal Requirements.**
- 17.46.060 Application Review Procedures.**
- 17.46.070 Public Notices, Public Hearings and Appeals.**
- 17.46.080 Findings Required.**
- 17.46.090 Standard Conditions of Approval.**
- 17.46.100 Enforcement**

**17.46.010 Purpose and Findings.**

A. **Purpose.** The purpose of this chapter is to establish comprehensive requirements and development standards for the siting, design, construction, maintenance and modification of wireless facilities in Carmel-by-the-Sea, including on public and private property and in public rights-of way, in order to manage their deployment and minimize adverse aesthetic impacts to Carmel-by-the-Sea's unique village character, consistent with and to the full extent of the City's authority under federal and California law.

B. **Findings.** The City Council hereby finds that:

1. Limitations on the placement of wireless facilities within the City limits are necessary to:

a. Protect Carmel-by-the-Sea's distinct "village in a forest, by the sea" character with its centralized commercial core surrounded by residential land uses.

b. Protect Carmel-by-the Sea's charm as a popular visitor destination, known as much for its spectacular coast as for its unique community character.

c. Recognize and respect that Carmel-by-the-Sea is among a limited number of California coastal communities where nearly the entire shoreline from the first public road to the sea is open to the public and easily accessible, and that over the years, Carmel has maintained a balance between preserving the beauty of the shoreline environment and adding the physical improvements that make the Carmel shoreline accessible and enjoyable to the public, keeping the entire beach and bluff as natural appearing as possible consistent with public access, habitat protection, safety and provision of limited recreational support facilities.

d. Recognize and respect that Carmel-by-the-Sea's streets are narrow in width, 26 to 34 feet, with few gutters or sidewalks and that this lack of formal development of streets throughout Carmel (with the exception of some of the downtown thoroughfares) has been a conscious effort on the part of residents to maintain a "village in a forest" atmosphere, and gives rise to many unique situations relating to traffic, circulation, parking and pedestrian safety.

2. Personal wireless services can serve as an important and effective part of Carmel-by-the-Sea's emergency response and communications.

3. The regulations contained herein are designed to promote public health, safety and community welfare, preserve the natural resources and scenic quality of Carmel-by-the-Sea and protect the character of the City's residential neighborhoods consistent with the findings in (1) and (2), while regulating managed development of wireless infrastructure throughout the City.

4. The provisions of this chapter are intended to:

a. Comply with all applicable goals, objectives and policies of the General Plan, the City's Local Coastal Program and the California Coastal Act.

b. Minimize adverse aesthetic impacts associated with wireless facilities in all districts.

c. Comply with all federal law, Federal Communications Commission rules, regulations and standards, California law, and California Public Utilities Commission regulations and standards.

#### **17.46.020 Definitions.**

The definitions in this Section apply to this chapter. Undefined terms shall have the meaning assigned to them in Chapter 17.70. Per Section 17.02.090(C), to the extent that this chapter quotes or paraphrases any State or Federal Statute for convenience and any conflict is discovered, or is created through amendment, the State or Federal Statute shall control and shall be cause for an amendment to this chapter.

**A. Generally Applicable Definitions**

1. “**accessory equipment**” means equipment other than antennas used in connection with a wireless facility. The term includes transmission equipment.
2. “**amateur station**” means the same as defined by the FCC in 47 C.F.R. § 97.3, which means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications. This term includes amateur radio antennas and related facilities used for amateur radio services.
3. “**antenna**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), which means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.
4. “**base station**” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), which means:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

5. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), which means (1) Mounting or installing an antenna facility on a pre-existing structure; and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For eligible facilities requests, the definition of collocation in B.1 below applies instead of this definition.
6. **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
7. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.
8. **“EFR” or “eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3) which means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
9. **“FCC” or “Commission”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
10. **“Fire Safety Authority”** means the Chief Building Official of the City of Carmel-by-the-Sea or the Fire Safety Authority’s designee.
11. **“historic resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources, the “Carmel Inventory of Historic Resources” or the “Carmel Inventory” as defined in code Section 17.32.230, the “Carmel Register of Historic Resources” or the “Carmel Register” as defined in code Section 17.32.230, or any “historic resource” or “historical resource” as defined in code Section 17.32.230. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.

12. “**non-pole concealment structure**” means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.

13. “**OTARD**” means any “over-the-air reception device” subject to the FCC rules in 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and antennas, and certain fixed wireless antennas not greater than one meter in diameter.

14. “**personal wireless service facility**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(i) which means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

15. “**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i) which means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

16. “**public right-of-way**” or “**public rights-of-way**” means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

17. “**reviewing authority**” means the City official or appointed/elected body responsible for application review and vested with authority to approve, approve with modifications and/or conditions, or deny such applications.

18. “**RF**” means radiofrequency.

19. “**small wireless facility**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(j), which means a personal wireless service facility that meets each of the following conditions:

(a) The facilities (i) are mounted on structures 50 feet or less in height including their antennas; or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume, excluding associated antenna equipment;

(c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;

(d) The facility does not require antenna structure registration under 47 CFR Part 17 (Construction, Marking and Lighting of Antenna Structures);

(e) The facility is not located on tribal land; and

(f) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

20. **“FCC shot clock”** means the time defined by the FCC in 47 C.F.R. § 1.6003 or 1.6100(c) (as applicable) in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless services facilities.

21. **“stealth”** means concealment elements, measures and techniques that mimic or blend with the underlying structure, surrounding environment and adjacent uses to screen all transmission equipment from public view and integrate the wireless facility into the built or natural environment such that, given the particular context, the average, untrained observer would not recognize the structure as a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying structure; (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality such that they appear part of the original structure’s design; and (3) concealment elements, measures and techniques that mimic or blend with the underlying structure, surrounding environment and adjacent uses

22. **“structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(m) which means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services). A tree including live, dead, partially cut down or limbed tree is not a structure and may not be used for placement of wireless facilities.

23. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9) which means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.



24. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8) which means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

25. **“Type I application”** means a collocation of a small wireless facility on an existing structure.

26. **“Type II application”** means a collocation on an existing structure which does not qualify as a Type I small wireless facility collocation or a Type V EFR.

27. **“Type III application”** means a new small wireless facility on new or replacement structure.

28. **“Type IV application”** means a new tower or any other wireless facility that is not a Type I, II, III, or V application.

29. **“Type V application”** means an eligible facilities request or EFR.

30. **“utility pole”** means a wood or steel vertical structure in the public right-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

31. **“visibility triangle”** means that portion of both the public and private property at any corner bounded by the curb line or edge of roadway of the intersecting streets and a line joining points on the curb or edge of roadway a distance in feet equivalent to the width of the roadway from the point of intersection of the extended curb lines or edges of roadway.

32. **“wireless facility”** means the transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), structure(s), and base station(s).

**B. Additional Definitions Applicable to Eligible Facilities Requests (EFRs) Only**

1. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), which means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

2. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means any tower or base station, provided that it is existing at the time the relevant eligible facilities request application is filed with the State or local government.

3. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means a constructed tower or base station is “existing” for purposes of an EFR, if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

4. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), which means that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.

5. **“substantial change”** or **“substantially change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), which establishes different criteria based on the particular facility type and location. For clarity, the definition in this chapter reorganizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.

- a. For towers outside the public rights-of-way, a substantial change occurs when:
  - i. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or
  - ii. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or

- iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- i. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - ii. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. the proposed collocation or modification involves excavation or deployment outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition, for all towers and base stations wherever located, a substantial change occurs when:
- i. the proposed collocation or modification would defeat the existing concealment elements of the eligible support structure as determined by the reviewing authority; or
  - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this definition.

- d. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits from the originally-permitted eligible support structure. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted eligible support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites that existed prior to February 22, 2012, the cumulative limit for vertically separated deployments is measured from the permitted site dimensions as they existed on February 22, 2012—the date that P.L. 112-96 was signed into law.

#### **17.46.030 Applicability.**

- A. **General.** This chapter applies to all requests for the City’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on property within the City’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to subsection (B). This includes permit applications submitted to the City for decision in its regulatory capacity for wireless facilities on property or structures owned or controlled by the City and located within the City, including in public rights-of-way; provided, however, that this chapter does not govern whether or under what terms and conditions the City, in its capacity as the property or structure owner, would lease, license or otherwise allow a wireless facility on such property or structures.
- B. This chapter shall not be applicable to the following:
  1. wireless facilities operated by the City for public purposes;
  2. wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber’s private residence, such as a “femtocell” or indoor distributed antenna system;
  3. OTARD antennas which are regulated pursuant to Chapter 15.40 (Antennas and Satellite Dishes);
  4. antennas and related transmission equipment used in connection with a duly authorized amateur station operated by a federally licensed amateur radio operator as part of the Amateur Radio Service; provided, that its maximum height does not exceed the height requirements of the zoning district;
  5. wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical

power, generation, transmission and distribution facilities subject to CPUC General Order 131-D;

6. temporary wireless facilities parked in a fixed location within the public rights-of-way for no longer than 10 days under an approved special events permit pursuant to Chapter 12.48.

#### **17.46.040 General Development Standards.**

- A. **Location Standards.** When considering compatibility of a location and structure for Type I, Type II, Type III and Type IV wireless facilities, the City requires applicants to propose those that will be the least intrusive to community character and values. Subsection B provides a ranking that describes Zoning Districts where wireless facilities are least compatible to most compatible with other uses. Subsection C provides the City's preference for placements on parcels over public rights-of-way. Subsection D provides structure rankings. Subsection E provides additional special considerations for site selection on public right-of-way.
- B. **Ranked Locations.** Applicants must propose placement in locations with the least intrusive land use designation (i.e.: Zoning) technically feasible and potentially available. Applications proposing placement in Tier I or II must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows no location in a Tier III land use tier is technically feasible and available. The following land use tiers are ranked from least compatible to most compatible:  
  
*Tier I (Least Compatible):*  
Senior Citizen Facility (A-3), Multi-Family Residential (R-4), and Single-Family Residential (R-1).  
  
*Tier II:*  
Improved Parklands (P-2), Natural Parklands and Preserves (P-1), and Theatrical (A-1).  
  
*Tier III (Most Compatible):*  
Central Commercial (CC), Service Commercial (SC), Community and Cultural (A-2), Residential and Limited Commercial (RC)
- C. **Preference for Placement on Private Parcels Over on Public Right-of-Way.** Placement on private parcels is strongly preferred over placements in the public rights-of-way because Carmel's public rights-of-way are narrow in width (26 to 34 feet), with few gutters or sidewalks. Limiting wireless facilities in public rights-of-way is necessary: (i) to ensure that the flow of pedestrian and vehicular traffic, including ingress to, or egress from, any residence, public building, or place of business or from the street to the sidewalk, by persons exiting or entering parked

or standing vehicles is maintained; (ii) to provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services; (iii) to ensure no interference to the performance of police, firefighter, and other emergency medical personal; and (iv) to maximize public access in the commercial districts and along the coast which have unusually high pedestrian and vehicular traffic volumes. Applications proposing placement in the public right-of-way must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows placement on a parcel is not technically feasible and available

D. **Structure Selection.** Applicants shall propose placement on the most-compatible structure that is technically feasible and available. Any application to place a wireless facility on a structure other than the most compatible structure must include a written justification, based on factual and verifiable evidence, that shows no more compatible structure is technically feasible and available.

1. **Structure Selection on Parcels.** The following structures are ranked from least compatible to most compatible on parcels:

- a. new (non-replacement) structures.
- b. residential historic structures
- c. existing building rooftops.
- d. existing (or replacement) non-building structures without existing wireless facilities.
- e. existing non-building structures with existing wireless facilities.

2. **Structure Selection on Public Rights-of-Way.** New (non-replacement) structures of any type (pole or non-pole) are the least compatible structures to use on public rights-of-way. Existing (or replacement) utility poles are the most compatible structures. Selection of structures/locations in the public right-of-way is also subject to the limitations in Subsection E below.

E. **Additional Special Considerations for Locations in the Public Right-of-Way.**

1. **Highly Incompatible Locations in the Public Right-of-Way.** Applicants shall not propose to install wireless facilities in/on a highly incompatible location in the public right-of-way unless the application is accompanied by a request for a special exception finding under Subsection 17.46.080(C). The following is a list of highly incompatible locations:

- a. any location in the public right-of-way within the Single-Family Residential Zoning District.
- b. any location in the public right-of-way that would trigger review of consistency with the Secretary of the Interior's Standards for potential



- d. Any location that would adversely affect any public property, including existing vegetation or its root structure, or significantly reduce greenbelt area that may be used for tree planting.
  - e. Any location within 10 feet away from any driveways for police stations, fire stations, or other emergency responder facilities.
  - f. Any location that would physically interfere with or impede access to any:
    - (i) above-ground or underground infrastructure for traffic control, or public transportation, including, without limitation, any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
    - (ii) public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop;
    - (iii) above-ground or underground infrastructure owned or operated by any public or private utility agency;
    - (iv) fire hydrant or water valve;
    - (v) doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way; or
    - (vi) fire escape.
4. **Encroachments Over Parcels.** No wireless facility, antenna, accessory equipment, or other improvements associated with a wireless facility placed in the public right-of-way, and no RF emissions that would render any portion of any private or public parcel outside the public right-of-way inaccessible to the general public or hinder future development of the parcel, may extend onto or over such parcel without the property owner's prior written consent.

## F. Design Standards

- 1. **General Requirements.** This subsection establishes generally applicable design standards for all Type I, Type II, Type III and Type IV wireless facilities in all locations. The design of Type I, Type II, Type III and Type IV wireless facilities must also comply with applicable administrative guidelines adopted by the Planning Commission pursuant to subsection 17.46.040(B)(2), Chapter 17.58, and the City Council pursuant to subsection 17.58.020(E).
  - a. **Stealth/Concealment.** All wireless facilities must be stealth to the maximum extent feasible. Colors and materials for wireless facilities shall be muted, subdued, non-reflective and chosen to minimize visibility to the greatest extent feasible.
  - b. **Overall Height.** To maintain the natural forested character of the community, wireless facilities may not exceed more than 10 feet above the average height of mature natural trees within the vicinity or the maximum height allowed by this code for the underlying zoning district where the facility is proposed, whichever is more restrictive.



- c. **Finishes.** All exterior surfaces shall be painted, colored, and/or wrapped in flat, muted, subdued, non-reflective hues that match the underlying structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the reviewing authority's prior approval.
- d. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this code. The reviewing authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- e. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- f. **Trees and Landscaping.** Wireless facilities shall not be installed (in whole or in part) within any tree drip line. Wireless facilities may not displace any existing tree or landscape and/or hardscape features. All wireless facilities proposed to be placed in a landscaped area must include landscape and/or hardscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The existing native vegetation shall be maintained to the maximum extent feasible. The reviewing authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be reviewed as part of a formal landscaping plan and approved by the City.
- g. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the reviewing authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- h. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved.

- Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth, and the reviewing authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any audible sirens or other sounds.
- i. **Fire Safety.** All wireless facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and if possible, improve the safety design.
  - j. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, this code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
  - k. **View Protection.** Wireless facilities shall be located and designed to preserve significant coastal views from the public right-of-way in conformance with Section 30251 of the California Coastal Act. The protection of public views should not prevent reasonable development of the site, yet development shall not preclude reasonable protection of any significant coastal view. Designs should respect views enjoyed by neighboring parcels. This objective is intended to balance the private rights to views from all parcels that will be affected by a proposed wireless facility. No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography. Wireless facilities which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.
2. **Administrative Detailed Wireless Facility Design Guidelines.** The Planning Commission may develop, and from time to time amend, Administrative Detailed Wireless Facility Design Guidelines consistent with the generally applicable design standards contained in this ordinance to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. The Administrative Detailed Wireless Facility Design Guidelines shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this

chapter and the Administrative Detailed Wireless Facility Design Guidelines, the development standards specified in this chapter shall control.

G. **Standards Applicable to Type V Wireless Facilities.** Type V applications are evaluated under the criteria for an eligible facilities request established by federal law and FCC regulations to determine whether or not the request involves a “substantial change” to an “eligible support structure” as these terms are defined in Section 17.46.020. Type V applications also must comply with any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.

#### **17.46.050 Wireless Application Types and Submittal Requirements.**

##### A. **Application Types**

1. **Conditional Use Permit Applications.** There shall be four (4) specific types of applications for conditional use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. The Planning Commission is the initial reviewing authority for Type I-IV applications. Decisions of the Planning Commission may be appealed to the City Council.

- a. **Type I Applications: Collocations of Small Wireless Facilities.** Type I applications shall be limited to applications wherein an applicant seeks to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.
- b. **Type II Applications: Collocations which do not qualify as a Small Wireless Facility Collocation or EFR.** Type II applications shall be limited to applications wherein an applicant is seeking to place a new personal wireless service facility upon an existing structure which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR.
- c. **Type III Applications: New Small Wireless Facilities on New or Replacement Structures.** Type III applications shall be limited to applications seeking to install and/or construct a new Small wireless facility that involves placement of a new or replacement structure.

- d. **Type IV Applications: New Towers and All Other Wireless Facilities, Except EFRs.** Type IV applications shall include any applications for the installation of a new personal wireless service facility which does not meet the criteria for Type I, Type II, Type III or Type V applications.
2. **Administrative Use Permit Applications.** There shall be one type of application for an administrative use permit under this section, which shall be a Type V application. The Director is the initial reviewing authority for Type V applications. Decisions of the Director may be appealed to the City Council.
  - a. **Type V Applications: Eligible Facilities Requests or EFRs.** Type V applications shall include any applications that purport to meet the criteria for an eligible facilities request under federal law and FCC regulations.

## B. Submittal Requirements.

1. **Application Content.** All applications for a permit under this Chapter must include all the information and materials required by the Application for Wireless Facility form and the applicable Wireless Facility Application Checklist adopted by resolution of the Planning Commission. The Planning Commission is authorized to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Planning Commission finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated and available. All applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. It shall be the obligation of any applicant to use the correct forms and explicitly and correctly identify which type of application they are filing.
2. **Application Fee/Deposit.** The applicant shall submit with its written materials the full application fee or deposit amount established by City Council resolution. If no application fee has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application, including costs of consultants retained by City. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be refunded to the applicant.
3. **Application Submittal.** All applications submitted under this chapter must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Community

Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in writing within five working days after the Community Planning and Building Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

4. **Other Permits and Reviews That May Be Required.** In addition to any permit required by this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, or local laws or regulations for the construction of the proposed facility, which includes, without limitation, any applicable permits or reviews listed below:
  - a. **Forest and Beach Commission Review.** Any proposed project that involves a request to remove or prune any tree type identified in Chapter 17.48 must be approved by the Forest and Beach Commission prior to determining completeness of the application.
  - b. **Historic Resources Board Review.** In accordance with Section 17.32.220, facilities proposed within a historic district or within the boundaries of an historic property included in the inventory are subject to additional review under Chapter 17.32 prior to consideration by the Planning Commission.
  - c. **Coastal Development Permit Review.** In accordance with Section 17.52.090, any person wishing to undertake any development in the coastal zone shall obtain a coastal development permit unless excluded from coastal permit requirements pursuant to Section 17.52.100.
5. **Voluntary Community Meetings.** The City strongly encourages, but does not require, prospective applicants and applicants to schedule, notice, arrange, and attend one or more voluntary community meetings with all interested members of the public. Community meetings may be conducted before or after application submittal. This community meeting is intended to give applicants the opportunity to hear from members of the public regarding the proposed project and any alternative locations or designs. Voluntary community meetings do not cause any FCC shot clock to begin.

#### **17.46.060 Application Review Procedures.**

##### **A. Completeness Review By Director**

1. In addition to exercising other duties and powers listed in Section 17.52.030 and elsewhere in this Title relevant to the application, the Director shall review each application and determine whether or not the application is complete and inform the applicant in writing that the application is complete or that additional

information is needed to complete the application consistent with timeline in Section 17.52.020 and the applicable FCC shot clock.

2. If the Director determines that the application is defective or incomplete, they shall promptly deliver a Notice of Incompleteness to the applicant in order to pause the applicable FCC shot clock.
3. The Director may take such other steps as may be required for the City to timely act upon applications for placement of wireless facilities, including entering into agreements with applicants to extend the time for action on any application under the applicable FCC shot clock.

## B. **Consultants**

1. **Use of Consultants.** Where deemed reasonably necessary by the City, the City may retain the services of professional consultants to assist the City in carrying out its duties in reviewing and making decisions on applications. The applicant and private landowner, if applicable, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the City for such services. In no event shall that responsibility be greater than the actual cost to the City of such engineering, legal, or other consulting services.
2. **Advance Deposits for Consultant Costs.** The City may require advance periodic monetary deposits held by the City on account of the applicant or landowner to secure the reimbursement of the City's consultant expenses. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the City Council. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.
3. **Liability for Consultant Expenses.** For an application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the City. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the City for funds expended to compensate services rendered to the City under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the City for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No conditional use permit, building permit or other permit shall be issued until reimbursement of costs and expenses determined by the City to be

due. In the event of failure to reimburse the City for such fees, the following shall apply:

- a. The City may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the City in prosecuting such action.
  - b. Alternatively, and at the sole discretion of the City, a default in reimbursement of such engineering, legal and consulting fees expended by the City shall be remedied by charging such sums against the real property that is the subject of the conditional use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the City. Such charges shall be levied and collected simultaneously and in the same manner as City-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the City Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.
4. **Independent Consultants Retained by Fire Safety Authority.** The Fire Safety Authority has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Safety Authority in connection with any application. The Fire Safety Authority may request independent consultant review on any matter committed to the Fire Safety Authority for review or approval. Subject to applicable laws, if the Fire Safety Authority elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs in connection with the services provided, which may include without limitation any actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described in this Section shall be applicable to independent consultant review required by the Fire Safety Authority.

D. **Director Denial Without Prejudice Due to Failure to Respond to Notice(s) of Incompleteness.** To promote efficient review and timely decisions, any application governed under this chapter regardless of type may be denied by the Director without prejudice when the applicant fails to tender a substantive response to the City within 120 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written

request prior to the 120th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

E. **Environmental Review.** Environmental review of the proposed project to protect and assure that citizens of the community contribute to the preservation and the enhancement of the environment shall be performed in accordance with Chapter 17.60 of the City's Municipal Code.

F. **Fire Safety Authority Review.** After submittal by the applicant, the relevant application materials shall be transmitted to the Fire Safety Authority for their review and any recommended conditions.

G. **Staff Report and Recommendations.** A staff report shall be prepared for Type I-IV applications involving a public hearing. Staff reports shall evaluate the compliance of the proposed project with the applicable City policies, regulations and requirements. The report shall recommend, with appropriate findings, the approval, approval with conditions, or disapproval of the application, based on the project evaluation. The report and supporting materials will be made available to the public in advance of the public hearing.

#### **17.46.070 Public Notices, Public Hearings, Decision Notices and Appeals.**

##### **A. Application Submittal Notices – For Types I-V**

1. **Posted and Hand-Delivered Notices.** Within five days after an application is duly filed with the Director, the applicant shall (1) post notice on the proposed project site in a location near to and visible from the public rights-of-way or in the public right-of-way if the project site is in the public right-of-way; (2) provide a hand-delivered postcard notice to neighbors within 100-foot radius of the site; and (3) provide the Director an affidavit that such notice has been posted and hand-delivered. The applicant is responsible for maintaining and replacing the posted notice as necessary during the duration of the application review process until the reviewing authority acts on the application. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The posted notice shall be no more than two square feet and not violate Section 17.40.070. The notice/sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the department on placement locations to avoid any potential hazards.



2. **City Website Notice.** Within 10 days after an application is duly filed with the department, the Director shall post notice of the submittal on the City's website.
  3. **Notice Content.** The notices required by this Section 17.46.070(A) shall include: (1) the project location with both an approximate street address and GPS coordinates; (2) the City's permit application number; (3) the application type and a general project description with photo simulations; (4) the applicant's contact information as provided on the application submitted to the City; (5) a URL for the City's website page where application information can be obtained once uploaded in accordance with Section 17.46.070(A)(2); and (6) a statement as to whether a public hearing will be required for the application.
- B. **Public Hearing Notices (For Types I-IV).** Public hearing notices shall be provided consistent with the requirements of Section 17.52.110.
- C. **Public Hearings (For Types I-IV).** The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.160.
- D. **Decision Notices.**
1. **For Types I-V.** Within five calendar days after the Planning Commission makes a decision on a Type I, II, III or IV application or the Director makes a decision on a Type V application, the Director shall: (1) deliver a written decision notice to the applicant; (2) post written notice of the decision at the proposed project site; (3) provide a hand-delivered written notice of the decision to neighbors within 100-foot radius of the site; and (4) post the decision on the City's website.
  2. **Content of Decision Notices for Types I-V.** The written notice sent to the applicant, posted at the proposed project site and hand-delivered to neighbors must contain: (1) the decision made (approval or denial); (2) either the reasons for the decision or where the reasons for the decision are available; (3) if the decision is a denial, a statement whether the denial is with prejudice or without prejudice for the purposes of CMC 17.52.170(D); and (4) instructions for how and when to file any appeal.
  3. **For Director Denials Without Prejudice.** The Director must send a written notice to the applicant to deny an application without prejudice due to failure to respond to notice(s) of incompleteness pursuant to Section 17.46.060(D)(1). The written notice shall state: (1) the number of days that have passed without the applicant tendering a substantive response to the City after the Director last deemed the application incomplete in a written notice to the applicant; (2) a statement that denial is without prejudice; and (3) instructions for how and when to file any appeal.

**E. Appeals.**

1. **For Types I-V.** Within ten calendar days after the Director issues the decision notices pursuant to Section 17.46.070(D)(1) or (3), any interested person may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that (1) the time for filing an appeal and the notice provisions in this chapter shall control over those in Chapter 17.54 and (2) appeals from an approval shall not be permitted when based solely on environmental effects from RF emissions exposure from the approved facility that was found compliant with applicable FCC regulations and guidelines.
2. **For Director Denials Without Prejudice.** Within ten calendar days after the Director issues the decision notice pursuant to Section 17.46.070(D)(3) denying an application without prejudice, the applicant may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that the time for filing an appeal and notice provisions in this chapter shall control over those in Chapter 17.54.
3. **Appeals to City Council.** The City Council shall be the appellate authority for all appeals in accordance with the provisions of Chapter 17.54. The City Council shall issue a written decision that contains the reasons for the decision, and such decision shall be the final action of the City and not subject to any further administrative appeals.

**17.46.080 Findings Required.**

**A. Types I to IV Applications**

1. **Required Findings for Approval.** The reviewing authority may approve wireless facility applications only when the reviewing authority makes all the following findings:
  - a. the proposed wireless facility will not result in adverse visual impacts because it complies with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines;
  - b. if applicable, to the extent the proposed wireless facility does not comply with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines, the applicant has requested a special exception and the findings for granting a special exception pursuant to Section 17.46.080(C) can be made;

- c. the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
  - d. the proposed wireless facility will comply with all applicable fire safety and public safety standards;
  - e. the proposed wireless facility will comply with fall zone requirements in the Administrative Detailed Wireless Facility Design Guidelines;
  - f. all public notices required for the application have been given;
  - g. all the findings required for a use permit pursuant to Section 17.64.010;
  - h. all the findings for discretionary design review approval pursuant to Section 17.58.060;
  - i. if applicable, all the findings required for a Coastal Development Permit.
2. **Conditional Approvals.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the reviewing authority's ability to conditionally approve any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, this code, or this chapter.

## B. **Type V Applications (EFRs)**

1. **Required Findings for Approval.** The reviewing authority may approve or conditionally approve an application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station in that it meets each and every one of the applicable criteria for an eligible facilities request stated in the definition of "substantial change," after application of the definitions in 47 C.F.R. 1.6100(b). The reviewing authority shall make an express finding for each criterion.

2. **Findings for Denial.** The reviewing authority may deny without prejudice any application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. does not meet the findings required in Section 17.46.080(B)(1);
  - b. involves the replacement of the entire eligible support structure; or
  - c. violates any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.
3. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the reviewing authority's authority to conditionally approve an application for an EFR administrative design review approval to comply with all generally applicable laws and to protect and promote the public health and safety.

C. **Special Exceptions for Federal or State Preemption (Types I to IV only)**

1. **Preface.** The provisions in this section establish the circumstances under which the City may grant a special exception to the standards in this chapter, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines, but only if specifically requested by the applicant in writing and only to the extent necessary to avoid conflict with applicable federal or state law. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
2. **Required Findings.** The reviewing authority shall not grant any special exception unless the reviewing authority finds the following:
  - a. the applicant has shown that denial of an application will result in an effective prohibition or otherwise violate federal law; OR the applicant has shown that denial of an application will violate state law.
  - b. the special exception requested by the applicant does not compromise or excuse compliance with any fire safety or other public health and safety requirements; and
  - c. the special exception is narrowly tailored such that any deviation from the requirements of this chapter is only to extent necessary for compliance with federal or state law.
3. **Evidentiary Standard.** The applicant shall have the burden to prove to the reviewing authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by

applicable federal or state law for the issue raised in the applicant's request for a special exception.

**17.46.090 Standard Conditions of Approval.**

A. **Wireless Facility Standard Terms and Conditions.** All wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, unless modified by the reviewing authority in an approval decision.

B. **Modified Approval Conditions.** The reviewing authority, when granting approval of a permit application, may modify, add to or remove standard conditions set forth in the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, as the reviewing authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions to the particular facts and circumstances associated with the project; and/or (3) memorialize any changes to the proposed project needed for compliance with the City's Municipal Code, generally applicable health and safety requirements and any other applicable laws.

**17.46.100 Violations**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Chapter 18.04 of this code, summary abatement pursuant to Chapter 15.57 of this code, California Code of Civil Procedure § 731, or any other remedy available to the City.

**SECTION 3.** Conforming Amendments To Code. [TBD]

**SECTION 4.** Effective Date. This Ordinance shall take effect 30 days after its adoption by the City Council of the City of Carmel-by-the-Sea and after approval by the California Coastal Commission.

**SECTION 6.** Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining sections, subsections, provisions, sentences, clauses, phrases or words of this Ordinance.

**INTRODUCED** at a Regular City Council Meeting on \_\_\_\_\_, 2023.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA** this \_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

---

---

Mayor

City Clerk

DRAFT