

CITY OF SAN MARCOS	POLICY NO. [reserved]
<i>adopted: [insert effective date]</i>	
City Council Policy on Small Wireless Facilities within the Public Rights-of-Way	

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SECTION 1. BACKGROUND AND INTRODUCTION

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

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

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

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

Municipalities, large and small, urban and rural, from all over the United States challenged the *Small Cell Order* in federal court. On August 12, 2020, the United States Court of Appeals for the Ninth Circuit invalidated many aesthetic restrictions in the *Small Cell Order* but largely upheld the other restrictions. *Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020). The court specifically invalidated the requirements that aesthetic regulations be objective and no more burdensome than those applied to other infrastructure deployments. See *id.* at 1039–42. Although municipalities may exercise reasonable discretion over small wireless facilities, they must do so on an expedited basis to meet the short shot clock limits. Municipalities sought review by the United States Supreme Court on the Ninth Circuit’s decision to uphold the FCC’s fee restrictions, but the Supreme Court denied that petition. See Order Denying Petition for Certiorari, *Sprint Corp. v. FCC*, No. 20-1354 (June 28, 2021). Thus, the *Small Cell Order*, as modified by the Ninth Circuit’s partial invalidation, is final with no further pending judicial review.

SECTION 2. PURPOSE AND INTENT

- (a) The City of San Marcos (the “City”) intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City’s environmental resources; (4) protecting and preserving the City’s public rights-of-way and municipal infrastructure located within the City’s public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City’s residents, businesses and visitors.

This Policy is intended to establish clear procedures for application intake and completeness review. The City of San Marcos City Council (“City Council”) finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City’s ability to act on such applications within the “presumptively reasonable” timeframes established by the FCC. The provisions in this Policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues

to mitigate incomplete applications prior to submittal. The provisions in this Policy also encourage applicants to timely respond to incomplete notices.

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

SECTION 3. DEFINITIONS

The definitions in this Section 3 shall be applicable to the terms, phrases and words in this Policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to them in San Marcos Municipal Code (SMMC) or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this Section 3 conflicts with any federal, state-mandated definition, or SMMC definition, then the federal, state-mandated, or SMMC definition will control, in that sequence.

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

“amateur station” means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “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.

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

“batched application” means more than one application submitted at the same time, but not more than 5 applications.

“City Manager” means the City Manager or the City Manager’s designee.

“City telecom pole standard” means the street light pole standard approved by the City Engineer for telecommunications attachments, as identified in the City’s Street Lighting Standards and Specifications manual.

“collocation” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term as mounting or installing an antenna facility on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For clarification, the FCC defines the term “collocation” in two contexts, one for small wireless facilities in 47 C.F.R. § 1.6002(g) and another for requests pursuant to Section 6409 in 47 C.F.R. § 1.6100(b)(2). This Policy uses the term “collocation” as defined for small wireless facilities unless expressly provided otherwise.

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

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

“Director” means the Development Services Department Director or the Director’s designee.

“FCC” means the Federal Communications Commission or any successor to that agency.

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

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

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

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

“persons entitled to notice” means the record owners and legal occupants of all properties within 50 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“prohibited support structure” means any support structure on which the City prohibits the deployment of wireless facilities, except when authorized as a pre-approved design

pursuant to this Policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, non-replacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the encroachment application for such pole.

“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.

“RF” means radio frequency or electromagnetic waves.

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

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

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

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

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

SECTION 4. APPLICABILITY

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

(b) **Small Wireless Facilities on City Property.** This Policy applies to permit applications, submitted to the City in its regulatory capacity, for small wireless facilities on property or structures owned or controlled by the City; provided, however, that this Policy does not govern whether or under what terms and conditions the City, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a small wireless facility on such property or structures.

(c) **Exemptions.** Notwithstanding anything in this Policy to the contrary, this Policy shall not be applicable to the following:

- (1) wireless facilities owned and operated by the City for its use;
- (2) OTARD facilities;
- (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409;
- (4) 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;
- (5) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
- (6) any radio transceiving equipment in the public right-of-way that is ten (10) feet or less in height and is used for secured communication to monitor and/or control public utility infrastructure (i.e. water, sewer, gas, or electric).

SECTION 5. REQUIRED PERMITS AND APPROVALS

- (a) **Right of Way Permit.** A “right of way permit”, subject to the Director’s review and approval in accordance with this Policy, shall be required for all small wireless facilities located in whole or in part within the public rights-of-way.
- (b) **Building Permit.** A building permit is required to ensure the foundation, private electrical connections, and structural calculations comply with the California Building Code.
- (c) **Other Permits and Approvals.** In addition to a right of way and building permits, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any permits and/or other approvals issued by other City departments or divisions. Any right of way permit granted under this policy shall

remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the right of way permit requirement under Section 4(c) does not exempt such wireless facilities from any other permits or approvals that may be required.

SECTION 6. APPLICATION AND REVIEW PROCEDURES

- (a) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all right of way permit applications for small wireless facilities must include the following information and materials:
 - (1) **Application Form.** The applicant shall submit a complete, duly executed right-of-way and building permit applications on the then-current form prepared by the City. The applicant shall state which FCC Shot Clock it asserts will apply to the proposed project and explain the basis for its assertion.
 - (2) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution. Batched applications must include the applicable permit application fee for each small wireless facility in the batch. If no permit application fee has been adopted, 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. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 300 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, pullboxes, junctions, transformers, meters, disconnect switches, and points of connection; and

(iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, fire codes, electric codes, local street standards and specifications (including the San Marcos Street Lighting Standards and Specifications), and public utility regulations and orders.

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

(5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application. The photo simulations must show all required elements of the facility that will be visible and shall be based on actual site photographs.

(6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); (ii) whether and why the proposed wireless facility meets each required finding for a right of way permit as provided in Section 8(b); and (iii) an written report that describes the potential fire hazards posed by the facility to surrounding vegetation and/or structures, and any steps taken by the applicant to mitigate such hazards. The project narrative shall also include a statement

as to any other planned deployments by the applicant within the City over the 12-month period from the date of submittal.

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies under penalty of perjury that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Site License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Site License Agreement on an agreed-upon form that identifies the structure(s) proposed to be licensed.
- (10) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.
- (11) **Structural Analysis.** The applicant shall submit a report prepared and certified by a California licensed professional structural engineer (or other

qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the standards and practices required for an ANSI/TIA-222 Maintenance and Conditions Assessment (under the most current revision at the time of submittal) and any safety and construction standards required by law and the utility provider. The report shall contain tolerances including, but not limited to, guy tensions if applicable, plumb, twist, slip splices and take-up devices.

- (b) **Voluntary Informational Meeting.** The City strongly encourages, but does not require, applicants to schedule and attend an Informational Meeting with City staff. This voluntary, meeting does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Informational Meetings are especially encouraged when an applicant seeks to submit one or more batched applications, so that City staff may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. City staff will use reasonable efforts to provide the applicant with an appointment within approximately five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff and/or consulting time and services rendered in the Informational Meeting.
- (c) **Submittal Appointments.** Unless the Director establishes an alternative submittal procedure pursuant to Section 6(e), all applications must be submitted to the City at a pre-submittal review appointment scheduled with City staff. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. City staff shall use reasonable efforts to offer an appointment within five working days after the City receives a written request from a potential applicant. Any purported application received without an appointment, whether

delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns, or destroys the materials received.

(d) **Incomplete Applications Deemed Withdrawn.** Any application governed under this Policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the City within 60 calendar days after the City deems the application incomplete by written notice. The City, in the City'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 60th 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. Any withdrawn application under this provision is not eligible for a refund of any fees paid to the City at filing.

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

SECTION 7. PUBLIC NOTICES

(a) **Construction Notice.** Not less than 10 days before the anticipated start date of construction, but not more than 20 days before the start date of any onsite construction activities, the applicant or their contractor, shall provide notification to all persons entitled to notification (as defined in this Policy). The construction notice shall be by either mail, door hanger, or as otherwise approved by the City to all persons with tenancy at properties located within 50 feet of the project site (as a midpoint of the pole location), and/or to any property that will have construction activity directly impact the frontage of their property. The notice shall have all of the following information: (1) the name of the project applicant/small cell operator; (2) a general project description, in clear and understandable language; (3) the anticipated start and end dates of the construction and daily start and end times, (4) the applicant's identification and contact information as provided on the application submitted to the City; (5) contact information for a foreman or onsite superintendent who can respond to complaints about construction activities; and (6) contact information for the City.

(b) **Application Decision Notice.** Within five calendar days after the Director acts on a right of way permit application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

SECTION 8. DECISIONS

(a) **Initial Administrative Decision.** The City shall approve, conditionally approve or deny a complete and duly filed right of way and building permit applications without a public hearing.

(b) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a right of way and building permit when the Director finds:

- (1) the proposed project complies with all applicable location standards (Section 10) and design standards (Section 11) in this Policy;
- (2) the proposed project qualifies as a “small wireless facility” as defined by the FCC;
- (3) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.

(c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the Director’s ability to conditionally approve or deny without prejudice any right of way or building permit application as may be necessary or appropriate to ensure compliance with this Policy.

SECTION 9. CONDITIONS OF APPROVAL

(a) **Standard Conditions.** Except as may be authorized in subsection (b), all facilities approved under this Policy shall be automatically subject to the conditions in this subsection (a).

- (1) **Permit Term.** The right to operate the small wireless facility pursuant to this right of way permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state

law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) The permittee may renew its right to operate the small wireless facility pursuant to this right of way permit not more than one year before expiration. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this encroachment permit and all applicable provisions in the San Marcos Municipal Code and this Policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the San Marcos Municipal Code, this Policy or other applicable law. Upon renewal, this encroachment permit will automatically expire 10 years and one day from its issuance.
- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (4) **Right of Way Permit Term.** The right of way permit will automatically expire six months upon issuance of the permit. If the right of way permit is approved, but the permit has not been issued for construction, the approval for the right of way permit shall be valid for twelve months. If the right of way permit approval expires, the permit shall be automatically void, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project. Prior to expiration, the permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in the right of way permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that

carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in the right of way permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to a right of way permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the San Marcos Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the San Marcos Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

(7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the San Marcos Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the San Marcos Municipal Code, the Director may, in addition to any other actions or remedies authorized by the permit, the San Marcos Municipal Code or other applicable laws, require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance. The permittee shall, at its sole cost and expense, repair and restore any damage, which includes, but is not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the

permittee fails to complete such repair within the number of days stated on a written notice by the Director, the Director shall cause such repair to be completed at permittee's sole cost and expense.

(8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

(9) **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (i) the name, physical address, notice address (if different), direct telephone number and email address for (a) the permittee and, if different from the permittee, the (b) site operator, (c) equipment owner, (d) site manager and (e) agent for service of process; (ii) the facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (iii) a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the City, the permittee shall furnish the City with an updated form that includes all the most-current information described in this condition.

(10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the right of way permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with the right of way permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the

defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve the right of way permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the right of way permit.

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

permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

(13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the right-of-way permit application, right-of-way permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the right-of-way permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

(14) **Abandoned Facilities.** The small wireless facility authorized under the right of way permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the San Marcos Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

(15) **Landscaping.** The permittee shall replace any landscape features on public or private property damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the

permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

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

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

(19) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the right of way permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. Except as may be expressly permitted otherwise, nothing in this permit will be construed to require the City or authorize the permittee to change any street grade, width or location, or add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along the site area or any portion of the public rights-of-way, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications, for the permittee's or any third party's convenience or necessity.

(20) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the right of way permit or the small wireless facility approved under the right of way permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

(21) **Safety Hazard Protocol.** If the Fire Chief (or his or her designee) or Board of Chiefs of the North County Dispatch Joint Powers Authority finds good cause to believe that the facility (including, without limitation, its accessory equipment, antenna and/or base station) presents a fire risk, electrical hazard or other immediate threat to public health and safety in violation of any applicable law, such officials may order the facility to be shut down and powered off until such time as the fire risk or electrical hazard has been mitigated. Any mitigations required shall be at the permittee's sole cost and expense.

(b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any right of way permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the San Marcos Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

SECTION 10. LOCATION STANDARDS

(a) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 300 feet from the proposed site; or (2) any more preferred locations or structures within 300 feet from the proposed site would be technically infeasible. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- (1) locations within public institution zones, industrial zones, business park zones or commercial zones on or along arterials;
- (2) locations within public institution zones, industrial zones, business park zones or commercial zones on or along collectors;
- (3) locations within public institution zones, industrial zones, business park zones or commercial zones on or along residential streets;
- (4) locations within specific plan areas, mixed use zones, and open space zones on or along parkway arterials or arterials;

- (5) locations within specific plan areas, mixed use zones, and open space zones on or along major collectors or local collectors;
- (6) locations within specific plan areas, mixed use zones, and open space zones on or along residential streets;
- (7) locations within residential zones on or along parkway arterials or arterials;
- (8) locations within residential zones on or along major collectors or local collectors;
- (9) locations within residential zones on or along residential streets.

(b) **Support Structure Preferences.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:

- (1) existing or replacement streetlight poles using the City telecom pole standard;
- (2) new, non-replacement streetlight poles using the City telecom pole standard (luminaire may not be required for new, non-replacement streetlight poles);
- (3) existing or replacement wood utility poles;
- (4) new, non-replacement poles for small wireless facilities.

(c) **Encroachments over Private Property.** No small cell antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way. Facilities that encroach onto private property are subject to the applicable rules of SMMC 20.465.030.

(d) **No Interference with Other Uses.** Small cells and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.

(e) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along

the public rights-of-way; and (3) be compliant with all applicable standards and specifications by the identified or required by the Director.

(f) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities and all related equipment and improvements shall:

- (1) be placed as close as possible to the property line between two parcels that abuts the public rights-of-way and, in residential zones, not be placed along residential frontage to the extent feasible;
- (2) not be placed within any sight distance triangles at any intersections;
- (3) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
- (4) not be placed in any location that obstructs views of any traffic signs or signals;
- (5) not be placed in any location that obstructs illumination patterns for existing streetlights;
- (6) be placed at least five feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
- (7) be placed at least 25 feet away from any driveways for police/sheriff's stations, fire stations or other emergency responder facilities.

SECTION 11. DESIGN STANDARDS

(a) **General Design Standards.** The standards in this Section 11 shall be applicable to all small wireless facilities in the public rights-of-way.

- (1) **Stealth/Concealment.** All small wireless facilities must be stealth to the maximum extent feasible with concealment elements, measures and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
- (2) **Least Visible Equipment.** The applicant must use the smallest and least visible antennas and accessory equipment possible to accomplish the coverage objectives.
- (3) **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.

- (4) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, non-reflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
- (5) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the San Marcos Municipal Code Section 20.300.070(E) and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable zone.
- (6) **Lights.** All street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with the San Marcos Street Lighting Standards and Specifications. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas.
- (7) **Trees and Landscaping.** Small wireless facilities shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced in-kind with native and/or drought-resistant trees, plants or other landscape features approved by the Director and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (8) **Signs and Advertisements.** All small wireless facilities that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (9) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities

shall be constructed from or coated with graffiti-resistant materials. Cabinets and equipment shroud must be kept secured to prevent unauthorized access.

(10) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with the San Marcos Street Lighting Standards and Specifications and all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.).

(b) **Streetlight Design Standards.** In addition to all generally applicable design standards in subsection (a), all small wireless facilities attached to streetlights shall comply with the City telecom pole standard and design guidelines adopted in the Street Lighting Standards and Specifications (**Exhibit A**). The Street Lighting Standards and Specifications may be amended from time-to-time by the City and each amendment shall be deemed incorporated into this Policy by reference. (**Note:** Figure 1 through Figure 3 depict stealth/concealment features that are generally consistent with the Street Lighting Standards and Specifications and are intended for illustrative purposes only.)



Figure 1: Pole-top antenna stealth concealed within a single shroud (or radome) with a tapered cable shroud.



Figure 2: 5G mmWave antenna/cable shrouds



Figure 3: 4G/5G configuration with antenna/cable shrouds

- (c) **Design Standards for New, Non-Replacement Streetlight Poles.** In instances where new poles are proposed that are not replacing existing streetlights, a new streetlight pole shall be designed in accordance with the Streetlight Attached Wireless Telecommunication Facility Design Guidelines (Exhibit A) and subsections (a) and (b) above. The location of the streetlight pole shall be consistent with existing streetlight spacing on the subject corridor, or as otherwise approved by the City Engineer. At the discretion of the City Engineer, a luminaire may be required for new, non-replacement streetlight poles.
- (d) **Design Standards for Other Pole Types.** In addition to all generally applicable design standards in subsection (a), all small wireless facilities attached to utility poles or other non-streetlight poles shall be subject to the standards in this subsection (d).
 - (1) **Antennas.** The provisions in this subsection (1) are generally applicable to all antennas attached to utility poles or other non-streetlight poles.
 - (A) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a shroud or radome. For pole-top antennas, the shroud shall not exceed a diameter of 18 inches, a height of 36 inches and footprint area of 5.25 square feet. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
 - (B) **Horizontal Projection.** The use of side-mounted antennas should be avoided. When necessary, side-mounted antennas shall not project: (A) more than 24 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.



Figure 4: Shrouded, side-mounted antenna on wood utility pole to comply with CPUC horizontal separation requirements



Figure 5: Pole-top antenna on a wood utility pole

(2) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (2) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities on utility poles or other non-streetlight poles.

(A) **Preferred Stealth/Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in a single cabinet or shroud in the least conspicuous position under the circumstances presented by the proposed pole and location. The cabinet or shroud shall not exceed 46 inches in height, 18 inches in width and 14 inches in depth. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.

(B) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least eight feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than eight feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.



Figure 4: Pole-mounted accessory equipment shroud on a wood utility pole

- (C) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 14 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet "flaps" or "wings").

- (D) **Orientation.** Unless placed behind a street sign or some other stealth elements that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the sidewalk to reduce the overall profile when viewed from the nearest abutting properties.

If orientation toward the sidewalk is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

(e) **Ground-Mounted Accessory Equipment.** The provisions in this subsection (d) are applicable to all ground-mounted accessory equipment in connection with small wireless facilities.

(1) **Ground-Mounted Stealth/Concealment.** Accessory equipment shall be pole mounted using stealth concealment techniques to the maximum extent feasible and shall not exceed 12 cubic feet in volume. If additional equipment is necessary to operate the facility and it cannot be located on the pole, then it shall comply with the following standards: On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed using stealth elements to the maximum extent feasible as follows: (A) underground, (B) behind the back of sidewalk and painted or wrapped in flat natural colors to blend with the landscape features; and (C) disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground utility districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. Back-up battery systems, in Very High Fire Hazard Severity Zones (VHFHSZ) may be mounted above ground on any type of road classification, provided they do not conflict with the public use of the right-of-way or ADA access.



Figure 7: Ground-mounted accessory equipment stealth concealed as a mailbox.

(2) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in width. Ground-mounted equipment cabinets shall not

have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.

(f) **Undergrounded Accessory Equipment.** The provisions in this subsection (e) are applicable to all undergrounded accessory equipment in connection with small wireless facilities.

(1) **Where Required.** The Director may require accessory equipment (other than any electric meter where permitted) to be placed underground when proposed in any (A) underground utility district or (B) any location where the Director finds substantial evidence that the additional above-ground accessory equipment would incommodate the public use in the public rights-of-way.

(2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall not exhibit logos or commercial advertisements.



Figure 8: Flush-to-grade underground equipment vault

(g) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed (A) on any single span between two poles or (B) adjacent to any single pole. The Director shall not approve any ground-mounted equipment

in connection with any strand-mounted wireless facility, except as required for a remote power source that delivers power to a cluster of strand-mounted wireless facilities. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one cubic foot in total volume. Any accessory equipment mounted on the pole shall be finished to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.

(h) **Utilities.** The provisions in this subsection (g) are applicable to all utilities and other related improvements that serve small wireless facilities.

- (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be "overlashed" with existing communication lines. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
- (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
- (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (4) **Electric Meters.** Small cells shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter that shall not exceed the width of the pole. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal.
- (5) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

SECTION 12. PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities. This Section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design substantially complies with the design standards in this Policy. The Director shall post a public notice on the City's website. The notice must generally describe the preapproved design, include a drawing or other visual representation of the preapproved design, specify whether the preapproved design would be limited or restricted in any zones or specified vertical infrastructure and contain a reference to the appeal procedure. Unless appealed pursuant to the San Marcos Municipal Code, the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.
- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted on the City's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sections 8(b)(1) and 8(b)(2) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections 8(b)(3) and 8(b)(4).
- (e) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

SECTION 13. EXCEPTIONS

- (a) **Preface.** The provisions in this section establish a procedure by which the City may grant an exception to the standards in this Policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the Director shall consider the findings in Section 13(b) in addition to the findings required under Section 8(b). Each exception is specific to

the facts and circumstances in connection with each application. An exception granted in one instance does not create a presumption or expectation that an exception will be granted in any other instance.

(b) **Findings for an Exception.** The Director may grant an exception to any provision or requirement in this Policy only if the Director finds that:

- (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
- (2) a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.

(c) **Scope of Exception.** If the Director finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this Policy to least extent necessary for compliance with federal or state law.

(d) **Burden of Proof.** The applicant shall have the burden to prove to the Director that an exception should be granted pursuant to this Section 13. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

EXHIBIT A

Streetlight Attached Wireless Telecommunication Facility Design Guidelines

DRAFT