



TO: Mayor and Councilmembers

FROM: Peter Imhof, Planning and Environmental Review Director
Charlie Ebeling, Public Works Director

CONTACT: Lisa Prasse, Current Planning Manager
Marti Milan, Principal Civil Engineer

SUBJECT: Ordinance regarding Wireless Facilities in the Public Road Rights-of-Way

RECOMMENDATION:

Conduct the second reading by title only, waiving further reading of Ordinance No. 19-____ entitled "An Ordinance of the City of Goleta, California Amending Title 12 of the Goleta Municipal Code Add Chapter 12.20 "Wireless Facilities in the Public Road Right-Of-Way – Wireless Encroachment Permit" (Attachment 1).

BACKGROUND:

In September 2018, the Federal Communications Commission (FCC) issued a declaratory order and regulations regarding Small Cell Wireless deployment. The FCC Order imposes new time lines for processing of requests for installation of wireless facilities in the public right of way and clarifies the areas that local entities may regulate. The proposed Ordinance develops an encroachment permit to process installation of wireless facilities in the public right of way under the new regulations. The Ordinance would add a new Chapter 12.20 to the Goleta Municipal Code, *Wireless Facilities in the Public Road Right-of-Way – Wireless Encroachment Permit* to Title 12 of the Goleta Municipal Code.

On April 16, 2019, the City Council considered and adopted an urgency ordinance adopting Chapter 12.20 to Title 20 of the municipal code in order address the immediate threat to the public health, safety, and welfare of the City and its residents that would occur with the immediate imposition of the FCC Order without a local process that would address those new regulations. At the same hearing, the Council 1) introduced and conducted a first reading of an identical ordinance following the usual procedures of a non-urgency ordinance; 2) determined that both ordinances are not subject to the California Environmental Quality Act; 3) adopted a resolution adopting fees for processing

and implementing a wireless encroachment permit application, and (4) approved a Master License Agreement template.

DISCUSSION:

The non-urgency ordinance introduced on May 7, 2019 is required to have a second reading before its adoption by the City Council. This ordinance will be effective on June 21, 2019, the thirty-first day after adoption.

FISCAL IMPACTS:

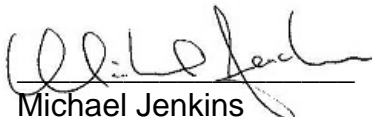
There is no immediate fiscal impact associated with this item. Revenues generated by the fees associated with the Wireless Encroachment permits are intended to offset the staff costs associated with the review and implementation of such permits.


ALTERNATIVES:

The City Council may elect to adopt the Ordinance as proposed, modify the draft Ordinance and introduce the Ordinance as modified on first reading, or decide not to adopt it.

Legal Review By:

Approved By:


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

1. Ordinance No. 19- ____ entitled "An Ordinance of the City of Goleta, California Adding Chapter 12.20 "Wireless Facilities in the Public Road Right-Of-Way – Wireless Encroachment Permit".

ATTACHMENT 1

**ORDINANCE ADDING CHAPTER 12.20 “WIRELESS FACILITIES IN
THE PUBLIC ROAD RIGHTS-OF-WAY”**

ORDINANCE NO. 19-__

**AN ORDINANCE OF THE CITY OF GOLETA, CALIFORNIA
AMENDING TITLE 12 OF THE GOLETA MUNICIPAL CODE
TO ADD CHAPTER 12.20 “WIRELESS FACILITIES IN THE
PUBLIC ROAD RIGHTS OF WAY - WIRELESS
ENCROACHMENT PERMIT”**

WHEREAS, the City of Goleta (the “City”), being a municipal corporation duly organized under the laws of the State of California, has the authority, pursuant to the powers delegated to it by the California Constitution, to adopt such ordinances as it deems necessary and appropriate to promote the public health, safety, and general welfare of its citizens, including the public rights-of-way; and

WHEREAS, the wireless telecommunications industry has expressed interest in submitting applications for the installation of “small cell” wireless telecommunications facilities in the City’s public rights-of-way, and other California cities have already received applications for small cell facilities to be located within their public rights-of-way; and

WHEREAS, state and federal laws have changed substantially since the City last adopted regulations for wireless telecommunication facilities. Such changes include establishing “shot clocks” whereby the City must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period, and state and federal laws permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C §332 (c) (7) (B) (iii); 47 C.F.R. §§ 1.40001, et se1.; Cal. Gov. Code §65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days. Additionally, a recent order and regulations issued by the Federal Communications Commission substantially alters the regulatory frameworks for “small cell” wireless telecommunications facilities, with such regulations becoming effective on January 14, 2019; and

WHEREAS, if not adequately regulated, installation of small cell and other wireless telecommunications facilities within the public rights-of-way can pose a threat to the public health, safety and welfare, including disturbance to the public road rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal

of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towners; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilities alternative technologies capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City; and

WHEREAS, the City currently regulates wireless telecommunications facilities through its zoning permit process. The existing standards need to be updated to reflect current telecommunications trends and legal requirements. Further, the primary focus of the zoning regulations is wireless telecommunication facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public rights-of-way; and

WHEREAS, the City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's natural beauty and various communities. The regulation of wireless installations in the public rights-of-way is necessary to protect and preserve the aesthetics in the community; and

WHEREAS, based on the foregoing, the City thus deems it to be necessary and appropriate to establish by ordinance certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas, and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations of that authority; and

WHEREAS, on May 7, 2019, the Goleta City Council held a noticed public hearing at which time all interested persons were heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 the 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 from 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, a wireless provider 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 the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines §15302 (replacement or reconstruction), State CEQA Guidelines §15303 (new construction or conversion of small structures), and/or State CEQA Guidelines §15304 (minor alterations to land).

SECTION 3. ACTION

Based on the findings of Sections 1 and 2 above, the City Council hereby:

- A. Amends Title 12 of the Goleta Municipal Code to add Chapter 12.20 as provided in Exhibit 1 to this ordinance;
- B. Directs a Notice of Exemption to be filed with the County Clerk of the County of Santa Barbara within five working days of the passage and adoption of this ordinance.

SECTION 4. 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 or competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 5. CERTIFICATION OF CITY CLERK

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 6. EFFECTIVE DATE

This ordinance shall become effective on the 31st day after its passage.

INTRODUCED ON the **7** day of May , 2019.

PASSED, APPROVED, AND ADOPTED this _____day of _____
2019.

PAULA PEROTTE, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, Deborah S. Lopez, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 19-__ was introduced on _____, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the _____, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

Exhibit 1

Chapter 12.20 WIRELESS FACILITIES IN PUBLIC ROAD RIGHTS-OF-WAY

Sections:

12.20.010	Definitions
12.20.020	Purpose
12.20.030	Scope
12.20.040	Administration
12.20.050	General Standards for Wireless Facilities in the Public Rights-of-Way
12.20.060	Applications
12.20.070	Administrative Review
12.20.080	Discretionary Review
12.20.090	Incomplete Applications & Applications Denied without Prejudice
12.20.100	Independent Consultants
12.20.110	Municipal Infrastructure
12.20.120	Construction and Other Permits
12.20.130	Inspection and Reporting
12.20.140	Revocation and Appeal Revocation
12.20.150	Conditions of Approval
12.20.160	Breach; Termination of Permit
12.20.170	Infrastructure Controlled by the City
12.20.180	Nondiscrimination

12.20.010 DEFINITIONS

The terms used in this Chapter shall have the following meanings:

- A. **Application:** A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.
- B. **Applicant:** A person filing an application for placement or modification of a wireless facility in the public right-of-way.
- C. **Accessory Equipment:** means any equipment serving or being used in conjunction with a Wireless Communication Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, batteries, cables, cabinets, vaults, or equipment structures.
- D. **Antenna:** means a device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and stand mounted wireless access points.

1. This definition does not include broadcast antennas, antennas designed for amateur radio use, or over-the-air reception devices as defined in 47 Code of Federal Regulations (C.F.R) 1.4000 such as satellite dishes designed for residential or household purposes.
- E. **Base Station:** shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(1), or any successor provision.
- F. **Camouflage:** means the means and methods by which a WCF is designed to be concealed and blend the installation with the surrounding environment.
- G. **City Code:** means the Goleta Municipal Code.
- H. **Director:** means the City of Goleta's Public Works Director or designee.
- I. **Eligible Facilities Request:** shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(3), or any successor provision.
- J. **Existing Height:** means the height of the tower, base station, or existing public infrastructure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.
- K. **FCC:** The Federal Communications Commission or its lawful successor.
- L. **Municipal Infrastructure:** City-owned or controlled property structures, objects, and equipment in the PROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, other poles, or lighting fixtures, located within the PROW.
- M. **Permittee:** any person or entity granted a wireless encroachment permit pursuant to this Chapter.
- N. **Personal Wireless Services:** shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).
- O. **Personal Wireless Services Facility:** means a wireless facility used for the provision of personal wireless services.
- P. **Public Right-of-Way, or PROW:** mean the public road right-of-way.
- Q. **Small Cell Facility:** shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):
 1. The facility—
 - a. is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
 - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. 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;
 2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
 5. The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
 6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).
- R. **Support Structure:** Any structure capable of supporting a base station.
- S. **Tower:** 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 personal wireless 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. This definition does not include utility poles.
- T. **Underground areas:** Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.
- U. **Utility Pole:** A structure in the PROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.
- V. **Wireless Communication Facility (WCF) or Wireless Facility:** means any fixed facility established for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, personal wireless services. A WCF can consist of one or more Antennas, Accessory Equipment and a Support Structure.
- W. **Wireless Encroachment Permit:** A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the PROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.
- X. **Wireless Infrastructure Provider:** A person that owns, controls, operates or manages a wireless facility or portion thereof within the PROW.
- Y. **Wireless Regulations:** Those regulations adopted pursuant to the provisions of this Chapter.

12.20.020 PURPOSE

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the PROW of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the PROW, and to ensure that the public is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and State law regarding the placement of personal wireless services facilities in its PROW. This Chapter shall be interpreted consistent with those provisions.

12.20.030 SCOPE

- A. **In General.** There shall be a type of encroachment permit entitled a "Wireless Encroachment Permit," which shall be subject to all the same requirements as an encroachment permit would under Chapter 12.20 of the Goleta Municipal Code in addition to all the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility or modify an existing wireless facility in the PROW must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the PROW by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.
- B. **Exemptions.** This Chapter does not apply to:
 - 1. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- C. **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the PROW requires the person(s) who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.
- D. **Pre-existing Facilities in the PROW.** Any wireless facility already existing in the PROW as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.
- E. **Public use.** Except as otherwise provided by California law, any use of the PROW authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

12.20.040 ADMINISTRATION

A. Public Works Director. The Director is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

1. Interpret the provisions of this Chapter;
2. Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
3. Develop and implement acceptable designs and development standards for wireless facilities in the PROW, considering the zoning districts bounding the PROW;
4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
8. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
10. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeals.

1. Any person adversely affected by the decision of the Public Works Director on a wireless encroachment permit pursuant to this Chapter may appeal the decision to the City Council (Appeal Body), which may decide the issues *de novo*, and whose written decision will be the final decision of the City and not be subject to further administrative appeal. An appeal must be filed within two business days after the published determination letter and shall state the specific reason for the appeal. The Director may extend the time for an aggrieved party to file an appeal but an extension may not

- be granted where extension would result in approval of the application by operation of law.
2. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law unless an extension of the time requirements of rendering a decision is mutually agreed upon.
 3. As section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the Director's decision premised on the environmental effects of radio frequency emissions will not be considered.

12.20.050 GENERAL STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

- A. **Generally.** Wireless facilities in the PROW shall meet the minimum requirements set forth in this Chapter, Design and Development Guidelines issued by the Director pursuant to this Chapter, and state and federal wireless regulations, in addition to the requirements of any other applicable law.
- B. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the PROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- C. **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the PROW, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way; and is consistent with the City of Goleta's Small Cell Design Guidelines.
- D. **Location Preferences.** All applicants should, to the extent feasible, collocate new facilities and substantial changes to existing facilities with existing facilities. Collocations should, to the extent feasible, be

proposed on structures in accordance with the preferences contained in the associated Design and Development Standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

- E. **Design Standards.** Wireless encroachment permits shall incorporate specific concealment elements to minimize visual impacts and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law and in accordance with the Design and Development standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

12.20.060 APPLICATION

- A. **Submission.** Applicant shall submit both paper copy and an electronic copy of all application materials to the City of Goleta, Public Works Department, 130 Cremona Drive, Suite B, Goleta CA 93117.
- B. **Content.** The applicant for a wireless encroachment permit shall submit an application on a Director-approved form to the Public Works Department, which may be updated from time to time, and all required fee(s) and deposit, documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the City Code. In the event a state or federal law prohibits the collection of any information required by this section, the Director is authorized to omit, modify or add to that request from the City's application form with the written approval of the City Attorney, which approval shall be a public record.
- C. **Fees.** The application shall be accompanied by the application processing fee or deposit established by resolution of the City Council pursuant to this Chapter. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit. All fees must be paid in full before any permit shall be issued from the City. Application processing fees must be paid at the time that the application is submitted. These fees are for permit processing and issuance only and are in addition to any other applicable fee or any separate payment that may be required for rent of City infrastructure.
- D. **Waivers.** Requests for waivers from any requirement of this section shall be made in writing to the Director. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be

conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City Code.

- E. **Shot Clock.** The City acknowledges there are federal and state shot clocks which may be applicable to an application for a proposed wireless facility. As such, the applicant is required to provide the City written notice when it believes any applicable shot clock is about to expire, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to the alleged expiration.

12.20.070 ADMINISTRATIVE REVIEW

- A. The following wireless encroachment permit applications are subject to administrative review:
 - 1. Routine maintenance to an existing WCF.
 - 2. Eligible facilities requests.
- B. The Director may designate staff to review and approve applications for administrative review. These applications are reviewed as an “over the counter” permit.
- C. Administrative review approval shall be granted if the Director, or designee, finds that:
 - 1. Application is complete;
 - 2. The proposed facility meets the definition for the type of activity proposed;
 - 3. The proposed facility complies with the requirements of the City Code and all other applicable laws.
- D. Following administrative review and approval of a wireless encroachment permit is issued, the applicant may pursue construction and other permits and inspections as required. A wireless encroachment permit issued under this section is not valid without all required construction and other permits and any required license under Section 12.20.110.

12.20.080 DISCRETIONARY REVIEW

- A. The following applications are subject to discretionary review:
 - 1. Small cell facilities.
- B. Applications for discretionary review shall require noticing as follows:
 - 1. The Director shall provide notice by First Class mail for all application at least 10 calendar days before a decision on the applications is made to property owners and, if feasible, tenants, located within 300 feet from each antenna location being proposed. The notice shall describe the proposal and the 14-day comment period. The Director will accept comments from the public during the comment period.

- C. The Director, or designee, is the review authority for discretionary review applications.
- D. *Determination*. Following the fourteen-day comment period, the Director shall review the application, pertinent documentation and public comments, and issue a decision and mail it to the applicant and any person that submitted written comments on the application. The following findings are prerequisites of an approval.
 - 1. The proposed facility complies with all of the applicable provisions the City Code.
 - 2. The proposed facility will not incommode the public use of the PROW.
 - 3. The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW.
 - 4. The proposed facility will comply with any standards adopted by the Director under Section 12.20.040(A).
 - 5. The proposed facility is in compliance with all federal and state standards and laws.
- E. The permit issued under this section is not valid without all required traffic control plans, construction and other permits and any required license under Section 12.20.110.

12.20.090 INCOMPLETE APPLICATIONS AND APPLICATIONS DENIED WITHOUT PREJUDICE

- A. The Director shall review all applications and provide notice of incompleteness, including the materials omitted, in conformity with state, local, and federal law. If an application is incomplete, the Director.
- B. The Director shall deny, in writing, an application without prejudice if the City has sent the applicant a communication requiring a response from the applicant and more than 60 days lapse without a response from the applicant. Once an application has been denied without prejudice, it may not be reopened and a new application must be made. No refunds of fees will be provided for applications denied without prejudice pursuant to this section.

12.20.100 INDEPENDENT CONSULTANTS

- A. **Independent Consultants**. The Director or the Appeal Body, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

Where the City determines that it requires expert assistance in evaluating an application, the City may hire a consultant and the fee

charged by the consultant shall be reimbursed to the City by the applicant regardless of the outcome of the application.

12.20.110 MUNICIPAL INFRASTRUCTURE

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to an agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.120 CONSTRUCTION AND OTHER PERMITS

Concurrent with the processing of and any required license, an applicant may begin the process of applying for other required and/or traffic control plans and any other permit required by law. These permits shall not be issued until the two (2) day appeal period as referenced in Section 12.20.040 has passed, or the decision on the wireless encroachment permit application becomes final.

12.20.130 INSPECTION AND REPORTING

The owner of the WCF when directed by the City must perform an inspection of the WCF and submit a report to the Director on the condition of the system to include any identified concerns and corrective action taken. Further, as the City performs maintenance on City infrastructure additional maintenance concerns may be identified. These will be reported to the owner of the WCF. The City shall give the applicant 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to the issuance of a permit under this Chapter, the owner of the WCF shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

12.20.140 REVOCATION AND APPEAL OF REVOCATION

Any permit or other authorized use of the PROW granted under this Chapter may be revoked or modified for cause in accordance with the provisions of this Section.

- A. Revocation proceedings may be initiated by the Director.
- B. Public Notice, Hearing and Action. After conducting a duly-noticed public hearing, the Director shall act on the proposed revocation.
- C. Required Findings. The Director may revoke or modify the permit if it makes any of the following findings:
 - 1. The permittee obtained the approval by means of fraud or misrepresentation of a material fact;

2. The permittee substantially expanded or altered the use or structure beyond what is set forth in the permit or substantially changed the installation's character;
 3. The use in question has ceased to exist or has been suspended for time periods based on the type of facility outlined in Section 12.20.150 (A) (21).
 4. Failure to comply with any condition of a permit issued;
 5. Failure to comply with this Chapter;
 6. A substantive change of law affecting a utility's authority to occupy or use the PROW of the City's ability to impose regulations relating such occupation or use;
 7. A facility interference with a City project;
 8. A facility's interference with vehicular or pedestrian use of the PROW; or
 9. Failure to make a safe and timely restoration of the PROW.
- D. Notice of action. The Director shall issue a written determination of revocation and mail the determination to the WCF owner within 10 calendar days of such determination.
- E. A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal, to the Appeal Body as follows:
1. File such appeal with the City Clerk within fourteen (14) calendar days of the revocation, and
 2. Provide a statement of any reasons why the permittee believes that the revocation should be reviewed.

12.20.150 CONDITIONS OF APPROVAL

- A. **Generally.** In addition to any supplemental conditions imposed by the Director or Appeal Body, all permits granted pursuant to this Chapter shall, must comply with all the policies and standards promulgated by the Director pursuant to this Chapter and be subject to the following conditions, unless modified by the approving authority. Further, if an application were ever deemed approved by application of law, these same conditions would be applicable:
1. *Code Compliance.* The permittee shall at all times comply with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of PROW. The Permittee is responsible for obtaining permits from other permitting agencies, including but not limited to the California Coastal Commission, California Fish and Wildlife, Santa Barbara Flood Control District, and the Regional Water Quality Control Board.
 2. *Permit Duration.* A wireless encroachment permit shall be valid for the same time period as the time period associated with the lease agreement, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of the lease agreement term, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding

a wireless encroachment permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

3. *Timing of Installation.* The installation and construction authorized by a wireless encroachment permit shall begin within ninety (90) days) after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
4. *Commencement of Operations.* The operation of the approved facility shall commence no later than thirty (30) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City.
5. *As-Built/Record Drawings.* The Permittee shall submit an as-built/record drawing within ninety (90) days after installation of the facility. As-built record drawings shall be provided in an electronic format acceptable to the City.
6. *Inspections; Emergencies.* The Director may enter onto the facility area to inspect the facility anytime during an emergency and provide notice to the permittee within 48 hours of an emergency. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the Director. The Director reserves the right to enter or direct his or her designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The Director shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
7. *Reporting; Ongoing.* The Permittee shall submit annually, at a minimum, report regarding the maintenance status of the system as outlined in Section 12.20.130. The Permittee shall submit the operation status of WCF attached to traffic signal on a quarterly basis (every 3 months) and yearly (every 12 months) for WCF attached to street lights. All reports must be submitted to the Director.

8. *Contact.* The permittee shall always maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
9. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of at least \$1,000,000 per occurrence for bodily injury and property damage and at least \$5,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
10. *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. 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 reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
11. *Performance Security.* Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance surety in the form of a letter of credit or other security acceptable to the Director for the removal of the facility in the event that the use is abandoned, or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal

to \$5,000 per street light and/or public/private poles and \$20,000 per traffic signal during the timeframe of the lease. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

12. *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
13. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the city's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within PROW or city utility easement to be affected by Permittee's facilities.
14. *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.
15. *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use

of any public property pursuant to any right of possession, occupancy, or use created by this permit.

16. *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the permittee within forty-eight (48) hours after notification from the City.
17. *RF Exposure Compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
18. *Testing.* Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that falls or is observed on a weekday. In addition, testing is prohibited on weekend days and in the evenings between 4:30 pm to 8:30 am.
19. *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Chapter.
20. *Conflicts with Improvements.* For all facilities located within the PROW, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
21. *Abandonment.* If a facility located on a traffic signal is not operated for a continuous period of ninety (90) days or if a facility located on a streetlight or public/private pole is not operated for a continuous period of ninety (90) days, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) days (i) the Director or Appeal Body has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No

later than ninety (90) days from the date the facility is determined to have ceased operation, or the permittee has notified the Director or Appeal Body of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

22. *Encourage Co-location.* Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
23. *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
24. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
25. *Other Permits.* The applicant is responsible for obtaining permits from permitting agencies, including but not limited to California Coastal Commission, California Fish and Wildlife, US Fish and

Wildlife, Santa Barbara County Flood Control District, and Regional Water Quality Control Board. Failure to comply with other permitting agency requirements/permits may be grounds for revocation of this Encroachment Permit.

26. *Lease Agreement.* Prior to the wireless encroachment permit becoming effective, the applicant must execute a Lease Agreement or other agreement as determined appropriate by and with the City of Goleta prior to constructing, attaching, or operating a facility within the City's PROW. A wireless encroachment permit is not a substitute for such agreement.
27. *Use of Generators.* Generators that support wireless facilities are prohibited from being placed in PROW and within setback areas on adjacent private properties.
28. *Electrical Source.* Wireless infrastructure providers must have their own electrical metering/source for their use of electricity.
29. *Prevention of Graffiti.* Installation design must prevent creating an attractive nuisance and must deter incidents of graffiti, vandalism and unauthorized access such as climbing.
30. *Existing Trees.* All existing trees in the PROW must be protected in place. If a street tree is removed or damaged because of the installation or maintenance of the small cell antenna, then the affected street tree must be replaced at a three (3) to one (1) ratio with City approved street trees type in a location(s) determined by the City.
31. *Compliance with Americans with Disabilities Act.* Wireless facilities cannot endanger public/property, impeded the flow of vehicular or pedestrian traffic, impair the use of poles, traffic signs, traffic signals, outdoor dining areas, emergency facilities or result in a failure to comply with the Americans with Disabilities Act.
32. *Signs.* Installation of signs are prohibited, except those that contain safety warnings or decals that indicate ownership or equipment as outlined in Section A of this document.
33. *Landscaping.* Wireless infrastructure providers are required to maintain or enhance existing landscaping consistent with surrounding vegetation.
34. *Passive cooling.* In residential areas, only passive cooling systems are permitted. If a fan is needed in non-residential areas, a cooling fan with a noise profile that does not exceed 50 decibels must be used.
35. *No Lighting unless FAA Required.* No facility may be illuminated unless specifically required by the Federal Aviation Administration (FAA) or other government agency. Beacon lights are not permitted unless required by the FAA or other government agency.
36. *Height Calculations.* Legally required lightning arresters and beacons must be included when calculating the height of facilities.

37. *Shielding of Lights*. Any required lighting must be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhood.
38. *Use of Motion Sensitive Lights*. Unless otherwise required under FAA or Federal Communications Commission (FCC) regulations, applicants may install only timed or motion-sensitive light controllers and must deflect lights to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
- B. **Eligible Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Director or Appeal Body, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
1. *Permit subject to conditions of underlying permit*. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
 2. *No permit term extension*. The city's grant or grant by operation of law of an eligible facility request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of an eligible facility request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
 3. *No waiver of standing*. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
- C. **Small Cell Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Public Works Director or the Appeal Body, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:
1. *No waiver of standing*. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules

related to small cell facilities, or any modification to those FCC orders or rules.

12.20.160 BREACH; TERMINATION OF PERMIT

- A. **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- B. **For installation without a permit.** A wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the PROW need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- C. **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as a violation of the Chapters 1.02 and 12.13 of the Goleta Municipal Code and the associated lease agreement.

12.20.170 INFRASTRUCTURE CONTROLLED BY CITY

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.180 NONDISCRIMINATION

In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or PROW user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the PROW.