

PUBLIC HEARING

**BELVEDERE CITY COUNCIL
DECEMBER 10, 2018**

To: Mayor and City Council

From: Emily Longfellow, City Attorney

Reviewed: Craig Middleton, City Manager
Irene Borba, Director of Planning and Building

Subject: Telecommunication facility urgency ordinance and administrative policies

Recommended Motion/Item Description

1. That the City Council conduct the public hearing and discuss the proposed Urgency Ordinance and related Administrative Policy Guidelines.
2. Motion to read the urgency ordinance by title only. The City Clerk will read aloud the full title of the ordinance.
3. Motion to adopt Urgency Ordinance by not less than a 4/5 vote to add Chapter 19.94 to the Belvedere Municipal Code “Wireless Telecommunication Facilities.”
4. Motion to approve resolution amending the Belvedere Administrative Policy Manual to add Chapter 327 “Wireless Telecommunication Facilities”.

Background

In response to the growing demand for increased wireless capability, the telecommunications industry is actively seeking to implement the fifth generation of wireless network technology, known as 5G. 5G technology requires the installation of new small cell antennas, which are smaller than traditional stand-alone towers and must be placed in closer proximity to each other. In most jurisdictions, small cell antennas are typically placed in public rights-of-way, mounted to existing utility infrastructure such as street lights and power poles. Small cell antennas are similar to WiFi-networks in that their coverage is limited and they must be placed approximately 300-500 feet apart. Therefore, next generation 5G technology will necessarily require increased density and a more rapid build-out to provide service.

Existing Federal and State law significantly limits local authority over wireless telecommunication facilities. Additionally, a recent Declaration and Order from the FCC further limits local control over small cell facilities, and imposes short “shot clocks” on processing small cell facility

applications.¹ The FCC Order provides that aesthetic requirements must be reasonable, no more burdensome than those applied for other types of infrastructure, and published in advance. This Order states that local jurisdictions must comply with various restrictions and deadlines by January, 2019.

Currently, Belvedere does not have specific regulations that apply to wireless facilities. Given the FCC's Order and recent interest among wireless carriers to install 5-G technology throughout California, it is important that the City of Belvedere immediately establish clear criteria for processing wireless facility applications and publish standards for these facilities. The Ordinance is proposed as an Urgency Ordinance, requiring a 4/5 approval vote, so that the standards may become effective immediately. The proposed Ordinance and related Administrative Policy Guidelines would govern the application, processing, aesthetic standards, and operation of wireless facilities to the extent allowed by Federal and State law. Because of the quickly changing nature of wireless facility law and technology, the substantive regulations are contained in the proposed Administrative Policy Guidelines so that they may be modified quickly and efficiently by City Council resolution should the need arise.

The following provides a brief overview of applicable Federal and State law regarding wireless facilities, and key points contained in the proposed City regulations.

Federal and State Law

The area of Federal and State law governing the telecommunications industry is highly-specific, broad, and designed to promote the development of wireless facilities and constrain local control. The following summarizes some of the key issues of these laws.

Both Federal and State law prohibit a local authority from regulating many aspects of telecommunication facilities, including:

- Regulations based on health or environmental impacts.
- Regulations to control electromagnetic or radio waves.
- Collocation on existing wireless telecommunication facilities.
- Modification of existing wireless towers that does not substantially change dimensions.
- The installation of wireless facilities on existing utility poles in public rights-of-way.

Importantly, under Federal law, a city may not prohibit, or have the effect of prohibiting wireless telecommunication facilities. (Federal Telecommunications Act, 47 U.S.C., § 253(a).)

However, Federal and State law allow local control over the placement, construction, and aesthetics of wireless facilities, so long as there is no "effective prohibition" on service.

¹ The FCC Order defines a small cell wireless facility as meeting the following conditions: 1) satisfaction of one of the following: a) mounted on structures no higher than 50 feet, including antenna; b) mounted on structures no more than 10% taller than other adjacent structures; or c) not extending existing structures to a height of more than 50 feet or 10% whichever is greater; 2) antenna is no greater than 3 cubic feet in volume; 3) all other wireless equipment associated with structure is no more than 28 feet in volume; 4) no human exposure to radio frequency radiation in excess of FCC Guidelines; 5) not located on Tribal lands; and 5) not require antenna registration.

Noted above, in September 2018, the FCC issued an Order effective in January 2019 that is intended to streamline the provision of wireless services, including new 5G technology. The FCC Fact Sheet and Order may be found at: <https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>.

First, the FCC Order makes it easier for telecommunication companies to install small cell facilities. In the Order, the FCC declared that a city need only “materially inhibit” the development of a small cell facility in order to constitute an “effective prohibition” in violation of Federal law. This declaration makes it less burdensome for a telecommunication company to bring an action against a city arguing that a certain condition or standard amounts to a prohibition, and is therefore illegal. This limits a local jurisdiction’s ability to regulate issues such as spacing between antennas, equipment design, and aesthetic factors to the extent they are determined to materially inhibit the development of a small cell facility.

Second, the FCC Order sets forth new regulations regarding the deployment of small cell antennas, including shot clocks and fees. The new FCC rules include:

- Shot Clock. Applications to mount small cell antennas on public infrastructure must be processed within 60 days, and applications for new poles must be processed within 90 days.
- Fee Guidelines. Fees are limited to \$500 for an initial application and \$270 for an annual right-of-way access fee per small cell. If higher fees are imposed, the local jurisdiction must establish that they are a “reasonable approximation” of costs incurred.

The recent FCC Order also provides that a city may impose requirements regarding the minimum spacing between small cell antennas, because spacing is considered an aesthetic consideration. However, the Order does not detail what it would consider a reasonable spacing distance and spacing between antennas may not be so distant as to effectively prohibit the functioning of wireless facilities.

Additionally, while a city may require that any new or substantially changed wireless facility receive a discretionary permit (such as a conditional use permit), non-substantial changes to existing facilities must be approved ministerially. (Otherwise known as a Section 6409(a), Eligible Facilities approvals.) However, because Belvedere currently only has one existing wireless facility, this provision will not significantly impact the City.

Finally, a city must allow wireless facilities in public rights-of-way, subject to certain exceptions and regulations based on aesthetics. Telephone companies have the right to place equipment - including wireless facility equipment - within public rights-of-way subject to aesthetic and safety standards.

Proposed Regulations

Under the proposed regulations, a wireless facility would need to receive Design Review approval and a Conditional Use Permit. The proposed regulations establish consistent standards for wireless facilities including design, siting, development, operation and maintenance, and the application process. The regulations are tailored to the City of Belvedere, but are similar to those recently adopted by other Marin municipalities including San Anselmo, Mill Valley, and Ross.

The key aspects of the proposed regulations include:

1. Conditional Use Permit. The proposed regulations require that wireless facilities projects receive a conditional use permit, and establish an application process to ensure that all FCC “shot-clock” deadlines are met. Additionally, there are detailed application requirements that will allow a full review of the proposed facility including photo simulations, detailed site plans, and the right of the City to hire an expert consultant to evaluate the plans at the applicant’s cost. Development, siting, and aesthetic conditions will be imposed as conditions to the permit. Permit duration is limited to 10 years, as required by law.

2. Preferred Locations and Configurations. The regulations contain a list of preferred locations and facility configurations. In order of preference, locations are: City-owned property or structures outside the public rights-of-way; City-owned property or structures inside the public rights-of-way; open space scenic zone, residential zones, and pedestrian-only public lanes. The preferred support structures are: collocations with existing facilities; roof-mounted; building-mounted; and new free standing wireless poles. Wireless facilities may not obstruct public views. Finally, for all applications to place a wireless facility in a public right-of-way, the applicant must demonstrate that it has the right to access the right-of-way under Federal or State law, and that it will not interfere with infrastructure or the City’s use or future use of the right-of-way.

3. Undergrounding. Noted above, cities may not effectively prohibit wireless service. As such, a city may not require the undergrounding of all wireless facility equipment, such as the antenna, because it would prohibit service. The proposed regulations require that all non-antenna wireless facility equipment be undergrounded to the extent feasible.

4. FCC Standards for Radio Frequency Emissions. As mentioned above, a city may not impose regulations based on potential health or environmental impacts, such as radio frequency emissions. However, the proposed regulations require the wireless facility to comply with all applicable FCC radio frequency rules.

5. Indemnification and Defend. The regulations require the permittee to defend and indemnify the City from any liabilities arising from the wireless facilities approval.

6. Exceptions. To ensure that the City complies with Federal and State law, the regulations allow for an applicant to request an exception to the standards in the event a denial would violate law. The applicant has the burden of proof to establish a violation.

7. Design and Development Standards. Detailed standards govern the design and development of wireless facilities. These standards include: concealment; height, width, and space occupied; setbacks; noise; landscaping; site security matters; backup power sources; light restrictions; and signage.

Conclusion

The recommended Urgency Ordinance and associated Administrative Policy Guidelines will allow the City to immediately impose standards and requirements for wireless facility applications to the extent allowed by Federal and State law. The regulations will also help ensure that the City complies with new “shot clock” requirements for reviewing applications. Because wireless technology and telecommunications law is rapidly shifting, imposing the City’s requirements in its Administrative Policy Manual will allow the City Council to rapidly respond to changes as necessary.

Environmental Review

The proposed Urgency Ordinance and Administrative Guidelines are exempt from review under the California Environmental Quality Act (“CEQA”) under the common sense exemption, CEQA Guideline 15061(b)(3), because it can be seen with certainty that the regulations will not have a significant impact on the environment.

Correspondence

As of the publishing date of this report, no correspondence has been received.

Recommendation

1. That the City Council conduct the public hearing and discuss the proposed Urgency Ordinance and related Administrative Policy Guidelines.
2. Motion to read the urgency ordinance by title only. The City Clerk will read aloud the full title of the ordinance.
3. Motion to adopt Urgency Ordinance by not less than a 4/5 vote to add Chapter 19.94 to the Belvedere Municipal Code “Wireless Telecommunication Facilities.”
4. Motion to approve resolution amending the Belvedere Administrative Policy Manual to add Chapter 327 “Wireless Telecommunication Facilities”.

Attachments

- Urgency Ordinance, adding Belvedere Municipal Code Chapter Section 19.94 “Wireless Telecommunication Facilities”.
- Resolution adopting Belvedere Administrative Policy Manual Chapter 327, “Wireless Telecommunication Facilities”.
- FCC Fact Sheet and Order (view at: <https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>)

CITY OF BELVEDERE

ORDINANCE NO. 2018-

**AN URGENCY ORDINANCE OF THE CITY OF BELVEDERE
ADDING CHAPTER 19.94 “WIRELESS TELECOMMUNICATION FACILITIES” TO
TITLE 19 (ZONING) OF THE BELVEDERE MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF BELVEDERE DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. The telecommunication industry is actively seeking to implement the fifth generation of wireless network technology, known as 5G, that requires the installation of new antennas that are smaller than traditional stand-alone towers and must be placed in closer proximity to each other; and
- B. Federal and State law preempt local control of wireless telecommunication facilities in several respects; and
- C. The purpose of this Ordinance is to establish uniform and comprehensive standards and regulations regarding the siting, development, and operation of wireless telecommunication facilities within the City in a manner consistent with State and Federal law; and
- D. California Public Utilities Code section 7901.1 gives the City the right to reasonably control the time, place, and manner of the location of wireless telecommunication facilities; and
- E. The Federal Telecommunications Act prohibits local jurisdictions from effectively prohibiting the provision of wireless service (47 U.S.C. §§ 332 and 253); and
- F. Local jurisdictions may not regulate wireless telecommunication facilities based on health concerns and/or radio frequency emissions; and
- G. Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act mandates local approval of eligible modifications and collocations to existing wireless telecommunication facilities; and
- H. Local jurisdictions must reasonably allow wireless telecommunication facilities to be located in public rights-of-way, but may impose regulations based on published aesthetic standards (Cal. Pub. Utilities Code, § 7901); and
- I. In September 2018 the Federal Communications Commission issued an Order and Declaratory Statement effective January 2019 in furtherance of its ongoing efforts to speed the development and provision of wireless telecommunication services, including small cell antennas; and
- J. In its September 2018 Order and Declaratory Statement, the FCC included short “shot clocks” or deadlines, within which local jurisdictions must decide on a wireless facility application or else the application will be deemed approved; and

- K. In its September 2018 Order and Declaratory Statement, the FCC further provided that local jurisdictions may impose aesthetic standards on wireless facilities if such standards are reasonable, published in advance, and do not effectively prohibit or materially inhibit wireless service; and
- L. Small cell antennas are primarily installed in public rights-of-way and therefore directly affect the public health, safety, and welfare by impacting traffic, pedestrian safety, and aesthetics; and
- M. The unregulated installation of wireless facilities, including small cell antennas, in public rights-of-way and in other locations, pose an immediate threat to the public health, safety, and welfare including: traffic and pedestrian safety hazards due to unsafe siting; negative and irreversible impacts to trees, landscaping, and infrastructure; visual and aesthetic blight due to excessive height and lack of camouflaging, negatively impacting the unique character of the City; and significant and immediate negative aesthetic impacts, including facilities that are excessively tall and not camouflaged; and
- N. The City has a legitimate governmental interest in regulating wireless telecommunication facilities because, if left unregulated, the installation of wireless facilities, including small cell antennas, pose an immediate threat to the public health, safety, and welfare by adversely impacting the safety, functionality, and aesthetics of rights-of-way and other areas in the City to the extent the wireless facilities are excessively bulky, tall, or otherwise inappropriate; the installation of facilities that lack appropriate camouflage and are not undergrounded to the extent feasible; and traffic and pedestrian safety hazards related to the installation and construction of wireless facilities in rights-of-way and throughout the City; and
- O. The City currently regulates wireless telecommunication facilities pursuant to the Zoning Code, but does not have any rules directly applying to telecommunication facilities; and
- P. In light of recent developments in Federal and State law with respect to the regulation of small cell antennas and other wireless telecommunication facilities, there is an immediate need for the City to update its Municipal Code and Administrative Policy Manual to reflect current telecommunication trends and necessary legal requirements, and publish aesthetic, location, and other standards for wireless facilities, as set forth in the attached draft Urgency Ordinance and accompanying Administrative Policy Amendments; and
- Q. Based on the foregoing, the City Council finds that the Ordinance is necessary to immediately protect the public health, safety, and welfare by establishing aesthetic and other appropriate standards that apply to all wireless telecommunication facilities, and allow the City to evaluate applications within the “shot clock” deadlines; and
- R. Pursuant to Article XI, section 7 of the California Constitution and sections 36931 et seq. of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and
- S. The Ordinance does not conflict and is consistent with the limitations imposed by Federal and State law, and does not effectively prohibit or materially inhibit the provision of wireless telecommunication services; and

- T. On December 10, 2018, the City Council held a duly noticed public hearing on the proposed Ordinance and considered all information in the record including public testimony at the hearing; and
- U. The City Council finds that the Ordinance is categorically exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guideline 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the proposed Ordinance could have a significant environmental effect.

SECTION 2. Declaration of Facts Constituting Urgency.

- A. Recitals. The facts set forth in the recitals in this Ordinance are true and correct and incorporated herein by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.
- B. Urgency Findings. The City Council finds and determines that the adoption of this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety pursuant to Government Code section 36937 because:
 - 1. The wireless telecommunications industry has expressed interest in submitting applications for the installation of small cell wireless telecommunications facilities throughout California and in the Tiburon Peninsula area, including in public rights-of-ways, and is currently submitting wireless facility applications around California in order to implement new wireless “5-G” technology.
 - 2. If not adequately regulated, installation of wireless telecommunication facilities pose a threat to the public health, safety, and welfare, including disturbances to public rights-of-way through the unregulated installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees, landscaping, and/or infrastructure where proximity conflicts may require unnecessary tree/landscaping removal or trimming, or other damage to infrastructure; land use conflicts and incompatibilities including excessive height of poles or towers; and creation of visual and aesthetic blight and potential safety concerns arising from excessive size, height, noise, or lack of camouflaging.
- C. Consistency. The Ordinance is consistent with Federal and State law, and the City’s General Plan.
- D. Authority and Effective Date. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code sections 36934 and 36937 and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

SECTION 3. **Addition.** Chapter 19.94, Wireless Telecommunication Facilities, is hereby added to the Belvedere Municipal Code to read as follows:

Chapter 19.94

WIRELESS TELECOMMUNICATION FACILITIES

Sections:

19.94.010 Wireless Telecommunication Facilities.

19.94.010 Wireless Telecommunication Facilities. All new wireless telecommunications facilities, and any modifications, collocations, expansions, or any other changes to existing wireless telecommunication facilities, are subject to Design Review pursuant to Chapter 20.04 of this Code, shall receive a Conditional Use Permit pursuant to Chapter 19.08 of this Code, and must receive any other permit and satisfy all requirements as specified in the Belvedere Administrative Policy Manual Part 15, Chapter 327, “Wireless Telecommunications Facilities,” as may be amended from time to time by City Council resolution.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon its passage by a four-fifths (4/5) vote of the City Council. Within fifteen (15) days following its passage, a summary of the Ordinance shall be published with the names of those City Council members voting for and against the Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance.

SECTION 6. Environmental Review. The adoption of this Ordinance is exempt from the California Environmental Policy Act (“CEQA”) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility of any significant environmental effects.

INTRODUCED AND ADOPTED AT A PUBLIC HEARING at a regular meeting of the Belvedere City Council on _____ by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED: _____
Robert McCaskill, Mayor

ATTEST: _____
Alison Foulis, City Clerk

CITY OF BELVEDERE

RESOLUTION NO. 2018-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
ADDING CHAPTER 327, “WIRELESS TELECOMMUNICATION FACILITIES,” TO
THE BELVEDERE ADMINISTRATIVE POLICY MANUAL**

WHEREAS, the Belvedere Administrative Policy Manual is a resource that contains the published statements of the City’s standards, policies, and procedures, and is adopted and amended by City Council Resolution; and

WHEREAS, the telecommunication industry is actively seeking to implement the fifth generation of wireless network technology, known as 5G, that requires the installation of new antennas that are smaller than traditional stand-alone towers and must be placed in closer proximity to each other; and

WHEREAS, Federal and State law preempt local control of wireless telecommunication facilities in several respects; and

WHEREAS, California Public Utilities Code section 7901.1 gives the City the right to reasonably control the time, place, and manner of the location of wireless telecommunication facilities; and

WHEREAS, the Federal Telecommunications Act prohibits local jurisdictions from effectively prohibiting the provision of wireless service (47 U.S.C. §§ 332 and 253); and

WHEREAS, local jurisdictions may not regulate wireless telecommunication facilities based on health concerns and/or radio frequency emissions; and

WHEREAS, Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act mandates local approval of eligible modifications and collocations to existing wireless telecommunication facilities; and

WHEREAS, local jurisdictions must reasonably allow wireless telecommunication facilities to be located in public rights-of-way, but may impose regulations based on published aesthetic standards (Cal. Pub. Utilities Code, § 7901); and

WHEREAS, in September 2018 the Federal Communications Commission issued an Order and Declaratory Statement effective January 2019 in furtherance of its ongoing efforts to speed the development and provision of wireless telecommunication services, including small cell antennas; and

WHEREAS, in its September 2018 Order and Declaratory Statement, the FCC included short “shot clocks” or deadlines, within which local jurisdictions must decide on a wireless facility application or else the application will be deemed approved; and

WHEREAS, in its September 2018 Order and Declaratory Statement, the FCC further provided that local jurisdictions may impose aesthetic standards on wireless facilities if such standards are reasonable, published in advance, and do not effectively prohibit or materially inhibit wireless service; and

WHEREAS, small cell antennas are primarily installed in public rights-of-way and therefore directly affect the public health, safety, and welfare by impacting traffic, pedestrian safety, and aesthetics; and

WHEREAS, the unregulated installation of wireless facilities, including small cell antennas, in public rights-of-way and in other locations, pose an immediate threat to the public health, safety, and welfare including: traffic and pedestrian safety hazards due to unsafe siting; negative and irreversible impacts to trees, landscaping, and infrastructure; visual and aesthetic blight due to excessive height and lack of camouflaging, negatively impacting the unique character of the City; and significant and immediate negative aesthetic impacts, including facilities that are excessively tall and not camouflaged; and

WHEREAS, the City has a legitimate governmental interest in regulating wireless telecommunication facilities because if left unregulated, the installation of wireless facilities, including small cell antennas, pose an immediate threat to the public health, safety, and welfare by adversely impacting the safety, functionality, and aesthetics of rights-of-way and other areas in the City to the extent the wireless facilities are excessively bulky, tall, or otherwise inappropriate; the installation of facilities that lack appropriate camouflage and are not undergrounded to the extent feasible; and traffic and pedestrian safety hazards related to the installation and construction of wireless facilities in rights-of-way and throughout the City; and

WHEREAS, the City currently regulates wireless telecommunication facilities pursuant to the Zoning Code, but does not have any rules directly applying to telecommunication facilities; and

WHEREAS, in light of recent developments in Federal and State law with respect to the regulation of small cell antennas and other wireless telecommunication facilities, there is an immediate need for the City to update its Administrative Policy Manual to reflect current telecommunication trends and necessary legal requirements, and publish aesthetic, location, and other standards for wireless facilities (the “Administrative Policy Amendments”); and

WHEREAS, based on the foregoing, the City Council finds that the Administrative Policy Amendments are necessary to immediately protect the public health, safety, and welfare by establishing aesthetic and other appropriate standards that apply to all wireless telecommunication facilities, and allow the City to evaluate applications within the “shot clock” deadlines; and

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 et seq. of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the Administrative Policy Amendments do not conflict and are consistent with the limitations imposed by Federal and State law, and do not effectively prohibit or materially inhibit the provision of wireless telecommunication services; and

WHEREAS, on December 10, 2018, the City Council held a duly noticed public hearing on the Administrative Policy Amendments and accompanying Urgency Ordinance regarding wireless telecommunication facilities, and considered all information in the record including public testimony at the hearing; and

WHEREAS, at said meeting the City Council voted to approve the Urgency Ordinance adding Chapter 19.94 to the Belvedere Zoning Code, “Wireless Telecommunication Facilities” that establishes the immediate need to regulate the installation, operation, and maintenance of wireless facilities; and

WHEREAS, at said meeting the City Council also voted to adopt a resolution adding Chapter 327 “Wireless Telecommunication Facilities” to the Belvedere Administrative Policy Manual, regulating wireless facilities; and

WHEREAS, the City Council finds the Administrative Policy Amendments are categorically exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guideline section 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the proposed Administrative Policy Amendments could have a significant environmental effect.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belvedere as follows:

1. The above recitals are true and correct and incorporated as findings herein; and
2. Chapter 327 “Wireless Telecommunication Facilities” is hereby added to the Administrative Policy Manual as set forth in Exhibit “A”.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Belvedere on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____

Robert McCaskill, Mayor

ATTEST: _____

Alison Foulis, City Clerk

EXHIBIT A

**CHAPTER 327. WIRELESS TELECOMMUNICATION
FACILITIES**

327.01 PURPOSE AND INTENT

The purpose and intent of this Administrative Policy is to provide uniform and comprehensive regulations and standards for the installation, design, permitting, collocation, modification, relocation, removal, operation, and maintenance of wireless telecommunication facilities in Belvedere, in accordance with Belvedere Municipal Code section 19.94, and consistent with State and Federal laws and regulations. The standards and procedures herein are intended to protect the public health, safety, and welfare by protecting the unique aesthetic character of the City, its natural setting, and its neighborhoods, while balancing the benefits provided from wireless service facilities. Nothing in this Administrative Policy shall be interpreted or applied to: 1) effectively prohibit or materially inhibit the provision of wireless telecommunication service; 2) unreasonably discriminate among providers of functionally equivalent wireless services; 3) deny any wireless telecommunication service request based on the environmental and/or health effects of radio frequency emissions to the extent that such facilities comply with Federal Communication Commission regulations; 4) prohibit any collocation or modification that the City may not deny under Federal or State law; or 5) impose any unfair, unreasonable, discriminatory, or anticompetitive fees that exceed the reasonable cost to provide the service for which the fee is charged.

327.02 DEFINITIONS

A. Accessory Equipment. Means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment structures, pedestals, meters, vault, splice boxes, and surface location markers.

B. Antenna. Means that part of a wireless telecommunication facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including but not limited to, cellular, personal communication services, and microwave communications. Such devices include but are not limited to, directional antennas such as panel antennas, microwave dishes, and satellite dishes; omnidirectional antennas and wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

C. Base Station. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

D. Collocation. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.

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

F. Eligible Facilities Request. Means the same as defined by Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified in 47 U.S.C. § 1455(a), and defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change its physical dimensions and involves a: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

G. Eligible Support Structure. Means the same as defined by FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) (Eligible Facilities) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

H. FCC. Means the Federal Communications Commission or a duly appointed successor agency.

I. FCC Shot Clock. Means the reasonable time frame within which the City generally must act on a given wireless telecommunications application, as defined by the FCC and as may be amended.

J. Personal Wireless Services. Means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

K. Personal Wireless Service Facilities. Means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

L. 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.

M. Site. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower, any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

N. Substantial Change. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). This definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

- (1) For towers outside the public rights-of-way, a substantial change occurs when:
 - (a) The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - (b) The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - (c) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

- (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - (a) The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - (b) The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - (c) The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - (d) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - (e) The proposed collocation or modification involves excavation outside the area in proximity to the structure or other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - (a) The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the Director of Planning and Building; or
 - (b) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets, or excavation that is inconsistent with the thresholds for a substantial change described in this subsection.

O. Tower. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (i.e., a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees, and lattice towers.

P. Transmission Equipment. Means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Q. Utility Pole. Means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary for the provision of electrical or other utility services regulated by the California Public Utilities Commission.

R. Wireless. Means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

327.03 APPLICABILITY

A. Applicability. This Chapter shall apply to all existing wireless facilities within the City and all applications and requests for approval to construct, install, modify, collocate, relocate, or otherwise deploy wireless facilities in the City, unless exempted. Eligible facilities requests to collocate, replace, or remove transmission equipment on an existing wireless tower or base station shall be reviewed under the Eligible Facilities Requests section of this Chapter.

B. Exempt. This Chapter shall not apply to: 1) wireless facilities owned and operated by the City; 2) wireless facilities installed on City property in the public right-of-way pursuant to a valid master license agreement with the City; 3) amateur radio facilities; 4) over-the-air reception devices subject to 47 C.F.R. §§ 1.4000 et seq. as may be amended, which includes satellite television dishes no greater than 1 meter in diameter; 5) wireless facilities installed completely indoors and intended to extend signals for personal wireless services; or 6) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation transmission, and distribution subject to CPUC General Order 131-D.

327.04 REQUIRED APPROVALS

A. Conditional Use Permit and Design Review Approval. A conditional use permit pursuant to BMC Chapter 19.80 and as set forth in this Chapter, and design review approval pursuant to BMC Chapter 20.04, is required for all new and substantially changed wireless facilities.

B. Other Permits and Regulatory Approvals. In addition to any conditional use permit or design review approval required by the City, the applicant must also obtain all other permits and regulatory approvals required by Federal, State, and/or local law, which include approvals required by other departments within the City. Any permit or approval granted pursuant to this Chapter and the Municipal Code, or deemed granted by law, shall remain subject to any and all lawful conditions and/or legal requirements associated with such approvals.

327.05 EMERGENCY DEPLOYMENT

In the event of a declared Federal, State, or local emergency, or when otherwise warranted by conditions that the City deems to constitute an emergency or a necessity, the Director of Planning and Building may approve the installation and operation of temporary wireless

telecommunications facilities (cells on wheels or “COWs”), sites on wheels (“SOWs”), cells on light trucks (“COLTs”), or other similarly portable wireless facilities, subject to such reasonable conditions as the Director deems necessary in her/his discretion.

327.06 **APPLICATION REQUIREMENTS**

A. Application Required. No application for a conditional use permit for a wireless facility shall be approved except upon a duly filed application consistent with this Chapter and any other written rules the City may establish from time to time in any publicly stated format.

B. Application Content. Applications for a conditional use permit for a wireless facility must include all information and materials required by the Director of Planning and Building. The City Council authorizes the Director to develop, publish, and from time-to-time update or amend, wireless facility conditional use permit application requirements, forms, checklists, informational handouts, and other related materials that the Director finds necessary, appropriate, or useful for the processing of any wireless facility application. All applications shall require that the applicant demonstrate that the proposed project will comply with all applicable health and safety laws, regulations, or other rules, which include without limitation building codes, electrical codes, and all FCC rules for exposure to radio frequency emissions.

C. Procedures for a Duly Filed Application. Any application for a conditional use permit for a wireless facility will not be considered duly filed unless submitted in accordance with the procedures in this subsection.

- (1) Pre-Submittal Conference. Before an application submittal, the applicant must schedule and attend a pre-submittal conference with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant’s scheduling request. The pre-submittal conference is intended to streamline the review process through discussion that includes without limitation issues related to compliance with City rules and regulations; generally applicable rules for health and safety; potential aesthetic and concealment issues; and application completeness issues. To mitigate any unnecessary delays due to application incompleteness, applicants are encouraged to bring any draft applications or other materials so that City staff may provide informal feedback and guidance regarding whether such applications or other materials may be incomplete or otherwise unacceptable.
- (2) Submittal Appointment. All applications must be submitted to the City at a pre-scheduled submittal appointment with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant’s scheduling request. Any application received outside of a submittal appointment, whether delivered in-person, by mail, or through any other means, shall not be considered duly submitted.

D. Applications Deemed Withdrawn. Any application for a wireless facility will be

automatically deemed withdrawn if the applicant fails to substantively respond to the City within 90 calendar days after the City determines in writing that an application is incomplete. The Director of Planning and Building may, in her/his reasonable discretion, grant a written extension for up to an additional 30 calendar days.

E. Peer and Independent Consultant Review.

- (1) Authorization and Scope. The City Council authorizes the Director of Planning and Building, in her/his discretion, to select and retain an independent consultant(s) in connection with any wireless facility conditional use permit application. The Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities, including without limitation permit application completeness or accuracy; pre-construction planned compliance with applicable regulations for exposure to radio frequency emissions; post-construction actual compliance with applicable regulations for radio frequency emissions; whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; the applicability, reliability, and/or sufficiency of any information, analyses, or methodologies used by the applicant to reach any conclusions about any issue within the City's discretion to review; and any other issue that the Director determines requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public hearings, and/or attend meetings with City staff and/or the applicant.
- (2) Consultant Fees; Deposits. If the Director of Planning and Building elects to retain an independent consultant(s) in connection with any wireless facility permit application the applicant shall pay the reasonable costs in connection with the services provided. Before the independent consultant(s) may perform any services, the applicant shall deposit with the City an amount equal to the estimated costs for the services to be rendered as determined by the Director. If the deposit exceeds the total costs for consultant services, the Director shall promptly return any unused funds after the wireless facility has received final City inspection or has is finally disapproved by the City. If the reasonable costs for consultant services exceeds the deposit, the Director shall invoice the applicant for the balance which shall be promptly paid by the applicant. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

327.07 FINDINGS

A. Generally Applicable Findings. Where a wireless telecommunications facility requires a conditional use permit under this Chapter, in addition to the generally applicable findings for all conditional use permits, the following additional findings are required:

- (1) The proposed wireless facility complies with all applicable provisions of

this Chapter.

- (2) The proposed wireless facility has been designed and located to achieve compatibility with the community to the maximum extent possible.
- (3) The applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC rules and regulations for human exposure to radio frequency emissions.
- (4) The applicant has demonstrated a good-faith effort to identify and evaluate preferred alternative locations and potentially less-intrusive alternative designs for the proposed wireless facility.
- (5) The applicant has demonstrated a meaningful comparative analysis that shows all preferred alternative locations and less intrusive alternative designs identified in the administrative record, if any, are either technically infeasible or unavailable.

B. Additional Findings In Right-of-Way. In addition to the findings in paragraph (A) above, the following findings are required for a wireless facility to be located in a public right-of-way.

- (1) The applicant has provided substantial written evidence supporting its claim that it has the right to enter the public right-of-way pursuant to Federal or State law, or the applicant has entered into an agreement with the City permitting it to use the public right-of-way.
- (2) The applicant has demonstrated that the wireless facility will not interfere with the use of the public right-of-way, existing underground infrastructure, or the City's plans for modification or use of the location.

327.08 LIMITED EXEMPTION; APPEALS

A. Limited Exception. If the applicant claims that strict compliance with any provision of this Chapter would effectively prohibit its ability to provide personal wireless services, the Planning Commission or City Council on appeal, may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition of wireless service if all of the following findings are made.

- (1) The proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii) as may be amended or superseded.
- (2) The applicant has provided a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility.
- (3) The applicant has provided a written statement that contains a detailed and fact specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this Chapter.
- (4) The applicant has provided a meaningful comparative analysis with factual reasons as to why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, the public, or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonably and clearly

defined technical service objectives of the proposed wireless facility.

- (5) The applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective of the proposed wireless facility. The City shall have the right to hire an independent consultant, at the applicant's sole expense, to evaluate the issues raised by any exception request.

B. Appeals. The applicant may file an appeal with the City Council from any denial, approval, or conditional approval of a wireless facility. Said appeal shall be in writing and shall be filed with the City Clerk not later than 10 calendar days after the Planning Commission's action. For purposes of filing an appeal, if the final day to appeal falls on a City Hall observed holiday or a day when City Hall is closed, the final day to appeal shall be extended to the next day City Hall is open for public business. The appeal shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this Chapter, the Municipal Code, and/or Federal and State law, and shall be accompanied by a filing fee as is hereafter fixed from time to time by City Council resolution. The City Council shall hold a de novo public hearing to consider the appeal. The City Clerk shall, not less than 10 calendar days prior to the date set for the City Council hearing on the appeal, give written notice to the applicant, and all residents and property owners within a 300-foot wide radius of proposed wireless facility, of the date, time and place of the public hearing. The Council may affirm, reverse, remand or modify the decision of the Planning Commission.

327.09 STANDARD CONDITIONS OF APPROVAL

In addition to compliance with the requirements of this Chapter, upon approval, whether approved by the City or deemed approved by the operation of law, all wireless facilities shall be subject to each of the following conditions of approval, as well as any modification to these conditions or additional conditions of approval deemed necessary.

A. Permit Term. The permit will automatically expire 10 years and one day from its issuance, except when California Government Code section 65964, as may be amended, authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification, or other change to the wireless facility, which includes without limitation any permit or other approvals deemed approved by operation of law, will not extend the term limit unless expressly provided otherwise or required by Federal or State law.

B. Strict Compliance with Approved Plans. Before the permittee submits any applications to the Building Department, the permittee must incorporate the conditional use permit for the wireless facility, all conditions associated with the permit, and approved photo simulations, into the project plans (the "Approved Plans"). The permittee must construct, install, and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications, or other changes to the Approved Plans, whether requested by the permittee or by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director of Planning and Building's prior review and approval, who

may refer the request to the Planning Commission in her/his discretion. The permittee shall submit an as-build drawing within 90 days after installation of the wireless facility.

C. Build Out Period. A conditional use permit for a wireless facility will automatically expire 1 year from the approval or deemed-approved date unless the permittee obtains all other permits and approvals required to install, construct, and/or operate the approved wireless facility, which includes any permits or approvals required by Federal, State, or local public agencies with jurisdiction over the property, the wireless facility, or its use. The Director of Planning and Building may grant one written extension to a date certain, not to exceed 1 additional year, if the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

D. 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 according to the Approved Plans and all conditions in the conditional use permit. The permittee shall keep the site area free from litter and debris at all times and shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware of such graffiti or vandalism, at no cost to the City.

E. Compliance with Laws. The permittee shall maintain compliance at all times with Federal, State, and local statutes, regulations, orders, or other rules that carry the force of law (the "Laws") applicable to the permittee, the subject property, the wireless facility, or any use or activity in connection with the authorized use covered by the conditional use permit, which includes without limitation any Laws applicable to human exposure to radio frequency emissions. The permittee expressly acknowledges and agrees that this condition is intended to be broadly construed and that no other specific requirement in these conditions are intended to reduce, relieve, or otherwise lessen the permittee's obligations to comply with all Laws.

F. Radio Frequency Compliance. If the Director of Planning and Building determines that there is good cause to believe that the wireless facility may emit radio frequency emissions in excess of FCC standards, the permittee shall cooperate with the City to determine if the wireless facility is in compliance with all FCC rules regarding human exposure to radio frequency emissions including, but not limited to submittal of an affidavit signed by a radio frequency engineer certifying the wireless facility's compliance with FCC rules; providing technical data such as the frequencies in use, power output levels, and antenna specifications, necessary to evaluate compliance with FCC radio frequency limitations; and all other actions deemed necessary to measure compliance.

G. Adverse Impacts on Other Properties. The permittee shall avoid undue or unnecessary adverse impacts to nearby properties that arise from the construction, installation, operation, modification, maintenance, repair, removal, and/or other activities at the site. The permittee shall not perform work that involves heavy equipment or machinery except during normal construction work hours as authorized by the City, excepting work required to prevent immediate harm to persons or property. The City may issue a stop work order for any activity that

violates this condition.

H. Inspections; Emergencies. The permittee expressly acknowledges and agrees that City representatives may enter the site and inspect the improvements and equipment thereon upon reasonable prior notice; provided however, that City representatives may, but will not be obligated to, enter the site area without prior notice in the event of an emergency or when the equipment threatens imminent harm to persons or property.

I. Contact Information. The permittee shall submit and maintain current basic contact and site information to the City, and shall notify the City of any changes to this information within 7 days of a change. This information includes but is not limited to: the name, address, email address, and 24-hour contact telephone number of the permittee, the owner, operator, and person(s) responsible for maintenance of the wireless facility; and legal status of the owner of the wireless facility including official identification numbers and FCC certification.

J. Performance Bond. Prior to the issuance of a building permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director of Planning and Building in an amount reasonably necessary to cover the cost to remove all improvements and equipment, and restore all affected areas, based on a written estimate from a qualified contractor with experience in wireless facilities removal.

K. Defend, Indemnify, Hold Harmless. The permittee shall defend with counsel acceptable to the City in its discretion, indemnify, protect, and hold harmless the City, elected and appointed officials, representatives, officers, and/or employees, from and against any and all claims, actions, or proceedings against the City, its elected and appointed officials, representatives, officers, and/or employees to attack, set aside, void, or annul an approval concerning a wireless facility conditional use permit, the wireless facility itself, or any related items or actions. Such indemnification shall include any and all liability damages, judgments, settlements, penalties, fines, and all defense costs including but not limited to attorneys' fees, expert witness fees, and any liability of any kind related to or arising from such claim, action, or proceeding. Nothing contained herein shall prohibit the City from participating in a defense of any claim, action, or proceeding.

L. Successors. All conditions of approval shall be binding to the permittee and all successors in interest to the permittee

M. Signage. All notices and signs required by the FCC and California Public Utilities Commission, and approved by the City, shall be posted on the site and include the permittee's emergency contact name and 24-hour telephone number.

327.10 ADDITIONAL CONDITIONS OF APPROVAL FOR FACILITIES IN THE PUBLIC RIGHT-OF-WAY

In addition to compliance with the Standard Conditions of Approval in Section 327.09, and the requirements of this Chapter, upon approval, whether approved by the City or deemed approved

by operation of law, all wireless facilities located in a public right-of-way shall be subject to each of the following conditions of approval.

A. The wireless facility shall be subject to such conditions, changes, or limitations as are deemed necessary by the City from time to time for the purpose of: protecting the public health, safety, and welfare; preventing damage to the public right-of-way and/or adjacent property; and preventing interference with pedestrian and/or vehicular traffic. The City may modify the permit to reflect such conditions, changes, or limitations pursuant to the public hearing procedures applicable to a wireless facilities application as set forth in this Chapter, except the permittee shall be given notice by personal service or certified mail.

B. The permittee shall not move, alter, relocate, change, or interfere with any existing structure, improvement, or property without the prior written 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 wireless facility unless it is determined that it will not adversely affect the City or any residents, and the permittee pays all costs and expenses related to its relocation. Prior to commencement of any work pursuant to an encroachment permit the permittee shall provide the City with documentation to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way to be affected by the wireless facility.

C. The permittee shall repair at its sole cost and expense any damage attributed to the wireless facility and/or its installation, construction, improvement, or maintenance, including but not limited to subsidence, cracking erosion, collapse, weakening, or loss of lateral support to streets, sidewalks, walkways, curbs, gutters, trees, landscaping, utility lines and systems, underground utility lines and systems, sewer systems, sewer lines, and any and all improvements of any kind.

D. If the wireless facility will be located within the canopy of a street tree, or a protected tree on private property, or within a 10-foot radius of the base of such a tree (or such larger radius in the City's discretion), then prior to the issuance of a building permit, the permittee must submit a tree protection plan prepared by a certified arborist for the review and approval of the Director of Planning and Building.

327.11 **SITE LOCATION AND CONFIGURATION GUIDELINES**

A. Purpose. The purpose of this section is to provide guidelines to applicants and the City regarding preferred locations and configurations for wireless facilities in the City, provided that nothing in this section shall be construed to permit a wireless facility in any location or configuration that would otherwise be prohibited by this Chapter. The City shall consider the extent to which a proposed wireless facility complies with these preferences and whether there are feasible alternative locations and/or configurations that are more preferred under this section.

B. Preferred Locations. All applicants must, to the extent feasible, propose new wireless facilities in the locations according to the following preferences ordered from most

preferred to least preferred:

- (1) City owned property or structures outside the public rights-of-way.
- (2) City owned property or structures inside the public rights-of-way.
- (3) Open space scenic zone.
- (4) Residential zones.
- (5) Pedestrian-only public lanes.

C. Additional Analysis for Discouraged Locations. For all new sites proposed in the open space scenic zone, residential areas, or pedestrian-only public lanes, the applicant must submit an additional analysis identifying at least three more preferred locations and provide a meaningful comparative analysis as to why these locations are either not technically feasible or not potentially available.

D. Preferred Support Structures. All applicants must, to the extent feasible and potentially available, install the wireless facility on a support structure according to the following preferences ordered from most preferred to least preferred:

- (1) Collocation with existing facilities.
- (2) Roof-Mounted.
- (3) Building-mounted.
- (4) New free standing wireless towers or poles.

E. Undergrounding. All non-antenna equipment associated with the wireless facility must be placed underground to the extent feasible. When above-ground is the only feasible location for a particular type of equipment, and the equipment cannot be pole-mounted, such equipment shall be enclosed within a structure, shall not exceed a height of 5 feet and total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible.

F. Location. Each component of a wireless facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or create safety hazards. Each component of a wireless facility shall also be located so as not to obstruct public views.

327.12 DESIGN AND DEVELOPMENT STANDARDS

A. Generally Applicable Development Standards. All new wireless facilities and substantial changes to existing wireless facilities not covered under Section 6409 must conform to the following generally applicable development standards.

- (1) **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the nature and/or built environment in a manner consistent and compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity.
- (2) **Overall Height, Width, and Space Occupied.** Wireless facilities may not exceed the applicable height limit for structures in the zoning district where they are located. All poles shall be designed to be the minimum functional

height and width required to support the proposed antenna installation and meet FCC requirements. Wireless facilities shall be designed to occupy the least amount of space that is technically feasible.

- (3) **Setbacks.** Wireless facilities may not encroach into any applicable setback in the zoning district where they are located.
- (4) **Noise.** Wireless facilities, including all accessory and transmission equipment, must comply with all noise requirements in Belvedere Municipal Code Chapter 8.10.
- (5) **Landscaping.** Wireless facilities must include a complete landscape plan when proposed in a landscaped area. The landscape plan must include existing vegetation, vegetation proposed to be removed or trimmed, and identify proposed landscaping by species, size, and location. The City may require additional landscaping to screen the wireless facility from view, avoid or mitigate potential adverse impacts on adjacent properties, or otherwise enhance the concealment of the wireless facility. The City may also require a tree protection plan.
- (6) **Site Security Measures.** Wireless facilities may incorporate reasonable site security measures, such as fences, walls, and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. Site security measures must be designed to enhance concealment to the maximum extent possible.
- (7) **Backup Power Sources.** The City may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly discourages backup power sources mounted on the ground or on poles within a public right-of-way. The City shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the City may approve sockets or other connections used for temporary backup generators.
- (8) **Lights.** Wireless facilities may not include exterior lights other than as may be required under law, or timed or motion-sensitive lights for security and/or safety as determined necessary or desirable by the City. All lights must be installed in locations and/or within enclosures that mitigate light impacts on other properties to the maximum extent possible.
- (9) **Signage.** Wireless facilities must include signage that accurately identifies the equipment owner/operator, its site name or identification number, and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless approved by the City or required by law.
- (10) **Future Colocations and Equipment.** To the extent feasible and aesthetically appropriate, all new wireless facilities should be designed and sited in a manner that can accommodate potential future collocation and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance of the facility.
- (11) **Utilities.** All cables and connectors for telephone, primary electric, and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Meters, panels,

disconnect switches, and other associated improvements must be placed underground to the extent possible or placed inconspicuous and concealed locations.

- (12) **Parking.** The installation of wireless facilities shall not interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number required for the property.

B. Freestanding Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed freestanding wireless facilities not covered under Section 6409 must conform to the requirements in this subsection.

- (1) **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) must be mounted directly behind the antennas to the maximum extent feasible.
- (2) **Ground-Mounted Equipment, Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, or other enclosures subject to the City's prior approval. The City may require additional concealment elements as necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.
- (3) **Monopoles.** The City shall not approve any unconcealed monopoles on private property within the City.

C. Building-Mounted Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed building-mounted wireless facilities not covered under Section 6409 must conform to the requirements in this subsection.

- (1) **Preferred Concealment Techniques.** To the extent feasible, building-mounted wireless facilities should be completely concealed and architecturally integrated into the existing façade or rooftop feature with no visible impacts (examples include, but are not limited to, antennas behind existing walls or façades replaced with radio frequency-transparent material finished to mimic the replaced materials). Alternatively, when integration within existing building features is not feasible, the wireless facility should be completely concealed in a new structure designed to mimic the original architecture (examples include, but are not limited to, cupolas, steeples, and chimneys).
- (2) **Façade-Mounted Equipment.** When wireless facilities cannot be placed behind existing walls or other existing screening elements, the City may approve façade-mounted equipment in accordance with this subsection. All façade-mounted equipment must be concealed behind screen walls and mounted as flush to the façade as practicable. The City may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building. The City may not approve any exposed façade-mounted antennas, including but not limited to, exposed antennas painted

to match the façade. To the extent feasible, façade-mounted equipment must be installed on the façade along the building frontage that is the least publicly visible.

- (3) **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style, and finish.
- (4) **Ground-Mounted Equipment, Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, or other enclosures subject to the City’s prior approval. The City may require additional concealment elements as necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

D. Right-of-Way Wireless Facilities. In addition to the Generally Applicable Development Standards, all new and substantially changed wireless facilities in a public right-of-way not covered under Section 6409 must conform to the requirements in this subsection.

- (1) **Concealment.** Wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment, and adjacent uses. Wireless facilities in the right-of-way may not unreasonably obstruct, impede, inconvenience, or hinder the public use.
- (2) **Support Structures.** Wireless facilities in the right-of-way must be installed on existing above-ground structures (such as light poles) whenever possible and aesthetically desirable. The City shall not approve any new, non-replacement support structure unless there are no potentially available above-ground support structures near the site, or the City finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with this Chapter.
- (3) **Undergrounded Equipment.** All equipment, other than the antenna and any electric meter, must be installed underground to the extent feasible.
- (4) **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as feasible. All pole-mounted equipment and required or permitted signage must face the street or otherwise be placed to minimize visibility from adjacent sidewalks and structures. All cables, wires, and other connectors must be routed through conduits within the pole whenever possible, and all external conduits, conduit attachments, cables, wires, and other connectors must be concealed from public view to the extent feasible.

327.13 ELIGIBLE FACILITIES REQUESTS

A. Purpose. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455(a)) generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove, or replace transmission equipment at an existing tower or base station.

B. Prior Approvals. Any eligible facilities request shall require an amendment to the underlying use permit for the tower or base station subject to the City's approval, conditional approval, or denial without prejudice pursuant to the standards and procedures contained in this subsection.

C. Other Permits and Regulatory Approvals. No eligible facilities request may be approved unless the applicant also obtains all other permits and regulatory approvals required by any other Federal, State, or local government. Any eligible facilities approval shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits and/or regulatory approvals.

D. Application Requirements

- (1) **Application Required.** The City shall not approve any eligible facilities request except upon a duly filed application consistent with this subsection and any other written rules or policies the City may establish from time to time in any publicly-stated format.
- (2) **Application Content.** All eligible facilities applications must include all information and materials required by the Director of Planning and Building. The City Council authorizes the Director of Planning and Building to develop, publish, and from time-to-time update or amend, eligible facilities application requirements, forms, checklists, informational handouts, and other related materials that the Director finds necessary, appropriate, or useful for the processing of any such application. All applications shall require that the applicant demonstrate that the proposed project will comply with all applicable health and safety laws, regulations, or other rules, which includes without limitation building codes, electrical codes, and all FCC rules for exposure to radio frequency emissions.
- (3) **Procedures for a Duly Filed Eligible Facilities Application.** Any eligible facilities application will not be considered duly filed unless submitted in accordance with the procedures in this subsection.
 - (a) **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director of Planning, which the Director shall schedule within a reasonable time from the applicant's scheduling request. The pre-submittal conference is intended to streamline the review process through discussion that includes without limitation, the appropriate project classification, including whether the project qualifies under Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); and any application completeness issues. To mitigate any unnecessary delays due to application incompleteness applicants are encouraged to bring any draft applications or other materials so that City staff may provide informal feedback and guidance regarding whether such applications or other materials may be incomplete or otherwise unacceptable.
 - (b) **Submittal Appointment.** All applications must be submitted to the

City at a pre-scheduled appointment with the Director of Planning and Building, which the Director shall schedule within a reasonable time from the applicant's scheduling request. Any application received without an appointment, whether delivered in-person, by mail, or through any other means, shall not be considered duly submitted.

- (4) **Applications Deemed Withdrawn.** Any application for an eligible facilities request will be automatically deemed withdrawn if the applicant fails to substantively respond to the City within 90 calendar days after the City determines in writing that an application is incomplete. The Director of Planning and Building may, in her/his reasonable discretion, grant a written extension for up to an additional 30 calendar days.
- (5) **Peer and Independent Consultant Review.**
 - (a) **Authorization and Scope.** The City Council authorizes the Director of Planning and Building, in her/his discretion, to select and retain an independent consultant(s) in connection with application for an eligible facilities request. The Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities including without limitation permit application completeness or accuracy; pre-construction planned compliance with applicable regulations for exposure to radio frequency emissions; post-construction actual compliance with applicable regulations to radio frequency emissions; whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; the applicability, reliability, and/or sufficiency of any information, analyses, or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and any other issued by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public hearings, and/or attend meetings with City staff and/or the applicant.
 - (b) **Consultant Fees; Deposits.** If the Director of Planning and Building elects to retain an independent consultant(s) in connection with any application the applicant shall pay the reasonable costs in connection with the services provided. Before the independent consultant(s) may perform any services, the applicant shall deposit with the City an amount equal to the estimated costs for the services to be rendered as determined by the Director. If the deposit exceeds the total costs for consultant services, the Director shall promptly return any unused funds after the wireless facility has received final City inspection. If the reasonable costs for consultant services exceeds the deposit, the Director shall invoice the applicant for the balance which shall be promptly paid by the applicant. The City shall not issue any construction or grading permit to any applicant

with any unpaid deposit requests or invoices.

E. Decisions and Appeals.

- (1) **Administrative Review.** The Director of Planning and Building shall administratively review a complete and duly filed eligible facilities request application and shall act upon such application ministerially without prior notice or a public hearing.
- (2) **Decision Notices.** Within 5 days after the Director of Planning and Building acts on an eligible facilities request application or before the FCC shot clock expires, whichever occurs first, the Director shall send a written notice to the applicant of the decision. If the Director denies the application, the notice must contain: the reasons for the decision; a statement that denial is without prejudice; and instructions for how and when to file an appeal.
- (3) **Eligible Facilities Findings.** The Director of Planning and Building may approve or conditionally approve an eligible facilities request application when she/he finds that the proposed project:
 - (a) Involves collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station; and
 - (b) Does not substantially change the physical dimensions of the existing wireless tower or base station.

F. Criteria for Denial Without Prejudice. Notwithstanding any other provision of this subsection and consistent with all applicable Federal laws and regulations, the Director of Planning and Building may deny without prejudice any eligible facilities request application when the Director finds that the proposed project:

- (1) Does not meet the eligible facilities findings;
- (2) Involves the replacement of the entire support structure; or
- (3) Violates any legally enforceable law, regulation, rule, standard, or permit condition reasonably related to the public health and safety.

G. Conditional Approvals. Subject to any applicable limitations in Federal or State law, nothing in this subsection is intended to limit the Director of Planning and Building's authority to conditionally approve an eligible facilities request application to protect and promote the public health and safety.

H. Appeals. Any applicant may appeal the decision of the Director of Planning and Building to deny without prejudice an eligible facilities request application. A written appeal together with any applicable appeal fee as established by the City council must be tendered to the City within 10 days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall be the appellate authority for all appeals of the Director's written decision. The City Manager shall review the application de novo; provided however that the City Manager's decision shall be limited only to whether the application should be approved or denied pursuant to the provisions in this subsection and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to further administrative appeal.

I. Standard Conditions of Approval. In addition to all other conditions adopted by the City, all approved eligible facilities requests, whether approved by the City or deemed approved by operation of law, shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary.

- (1) **Permit Term.** An approved eligible facilities request, whether by the City's approval or operation of law, constitutes a Federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. Such approval shall not extend the permit term, if any, for any conditional use permit or other underlying prior regulatory authorization. Accordingly, an eligible facilities request approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
- (2) **Accelerated Termination Due to Invalidation.** In the event that a court of competent jurisdiction invalidates all or any portion of an eligible facilities request approval or any FCC rule that interprets Section 6409 such that Federal law would not mandate approval, such approval shall automatically expire 1 year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of a previously approved eligible facilities approval or the Director of Planning and Building grants an extension upon a written request that shows good cause for the extension, including without limitation extreme financial hardship. The Director may not grant a permanent or indefinite extension. The permittee shall not be required to remove its improvements under the invalidated eligible facilities approval if it obtains the applicable permit(s) or submitted an application for such permit(s) before the 1-year period ends.
- (3) **Reservation of Standing.** The City's grant or grant by operation of law of eligible facilities approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409, or any section of an eligible facilities approval.
- (4) **Strict Compliance with Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must include the eligible facilities request approval, all associated conditions, and the approved photo simulations into the project plans (the "Approved Plans"). The permittee must construct, install, and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications, or other changes to the Approved Plans, whether requested by the permittee or by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director of Planning and Building's prior review and approval, who may refer the request to the Planning Commission in her/his discretion. The permittee shall submit an as-built drawing within 90 days after installation of the wireless facility. The Director may revoke the eligible facilities request approval if she/he finds that the requested alteration, modification, or other change may cause a substantial change to the project.

- (5) **Build Out Period.** The eligible facilities request approval will automatically expire 1 year from the approval or deemed-approved date unless the permittee obtains all other permits and approvals required to install, construct, and/or operate the approved wireless facility, which includes any permits or approvals required by Federal, State, or local public agencies with jurisdiction over the property, the wireless facility, or its use. The Director of Planning and Building may grant one written extension to a date certain, not to exceed 1 additional year, if the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- (6) **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 according to the Approved Plans and all conditions in the eligible facilities approval. The permittee shall keep the site area free from litter and debris at all times and shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware of such graffiti or vandalism, at no cost to the City.
- (7) **Compliance with Laws.** The permittee shall maintain compliance at all times with all Federal, State, and local statute, regulations, orders, or other rules that carry the force of law (the “Laws”) applicable to the permittee, the subject property, the wireless facility, or any use or activity in connection with the use authorized in the eligible facilities request approval, which includes without limitation any Laws applicable to human exposure to radio frequency emissions. The permittee expressly acknowledges and agrees that this condition is intended to be broadly construed and that no other specific requirement in these conditions are intended to reduce, relieve, or otherwise lessen the permittee’s obligations to comply with all Laws.
- (8) **Radio Frequency Compliance.** If the Director of Planning and Building determines that there is good cause to believe that the wireless facility may emit radio frequency emissions in excess of FCC standards, the permittee shall cooperate with the City to determine if the wireless facility is in compliance with all FCC rules regarding human exposure to radio frequency emissions including, but not limited to submittal of an affidavit signed by a radio frequency engineer certifying the wireless facility’s compliance with FCC rules; providing technical data such as the frequencies in use, power output levels and antenna specifications, necessary to evaluate compliance with FCC radio frequency limitations; and all other actions deemed necessary to measure compliance.
- (9) **Adverse Impacts on Other Properties.** The permittee shall avoid undue or unnecessary adverse impacts on nearby properties that arise from the construction, installation, operation, modification, maintenance, repair, removal, and/or other activities at the site. The permittee perform work that involves heavy equipment or machinery except during normal construction

work hours as authorized by the City, excepting work required to prevent immediate harm to persons or property. The City may issue a stop work order for any activity that violates this condition.

- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that City representatives may enter the site and inspect the improvement and equipment thereon upon reasonable prior notice; provided however, that City representatives may, but will not be obligated to, enter the site area without prior notice in the event of an emergency or when the equipment threatens imminent harm to persons or property.
- (11) **Contact Information.** The permittee shall submit and maintain current basic contact and site information to the City, and shall notify the City of any changes to this information within 7 days of any change. This information includes but is not limited to: the name, address, email address, and 24-hour contact telephone number of the permittee, the owner, operator, and person responsible for maintenance of the wireless facility; and legal status of the owner of the wireless facility including official identification numbers and FCC certification.
- (12) **Performance Bond.** Prior to the issuance of a building permit in connection with an eligible facilities request approval, the permittee shall post a performance bond from a surety and in a form acceptable to the Director of Planning and Building in an amount reasonably necessary to cover the cost to remove all improvements and equipment, and restore all affected areas, based on a written estimate from a qualified contractor with experience in wireless facilities removal.
- (13) **Defend, Indemnify, Hold Harmless.** The permittee shall defend with counsel acceptable to the City in its discretion, indemnify, protect, and hold harmless the City, elected and appointed officials, representatives, officers, and/or employees, from and against any and all claims, actions, or proceedings against the City, its elected and appointed officials, representatives, officers, and/or employees to attack, set aside, void, or annul an eligible facilities request approval, the wireless facility itself, or any related items or actions. Such indemnification shall include any and all liability damages, judgments, settlements, penalties, fines, and all defense costs including but not limited to attorneys' fees, expert witness fees, and any liability of any kind related to or arising from such claim, action, or proceeding. Nothing contained herein shall prohibit the City from participating in a defense of any claim, action, or proceeding.
- (14) **Successors.** All conditions of approval shall be binding to the permittee and all successors in interest to the permittee
- (15) **Signage.** All notices and signs required by the FCC and California Public Utilities Commission, and approved by the City, shall be posted on the site and include the permittee's emergency contact name and 24-hour telephone number.

327.14 CESSATION OF USE OR ABANDONMENT

A. A wireless facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunication services for 90 or more consecutive days.

B. The operator of a wireless facility shall notify the City in writing of its intent to abandon or cease use within 10 days of abandoning or ceasing use. Notwithstanding any other provisions herein, the operator of the wireless facility shall provide written notice to the City of any discontinuation of operation of 30 days or more.

C. Failure to inform the City of a discontinuation of operations required by this subsection shall constitute a violation of any approvals and the grounds for: revocation or modification of the permit; calling of any bond or other assurance or condition of approval; removal of the wireless facility pursuant to a nuisance abatement action; and any other remedies allowed by law.

327.15 REMOVAL AND RESTORATION, PERMIT EXPIRATION, REVOCATION OR ABANDONMENT

A. Removal Obligation. Upon the expiration of a permit, including any extensions, earlier termination, or revocation of the permit, or abandonment of the facility, the permittee, owner, or operator shall remove the wireless facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be pursuant to proper health and safety requirements and all requirements of the City. The facility shall be removed from the property within 30 days at no cost to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration under this subsection.

B. Failure to Remove. Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 30 days after the expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the Belvedere Municipal Code and grounds for: calling of any bond or other assurance or condition of approval; removal of the facility pursuant to a nuisance abatement action; and any other remedies allowed by law.