

**CITY OF BELVEDERE**

**ORDINANCE NO. 2019-8**

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

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**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. In December 2018, the City Council adopted an Urgency Ordinance and an associated Administrative Policy Manual amendment regulating wireless telecommunications facilities to the extent allowed by Federal and State law; and
- P. The City Council desires to permanently codify the Urgency Ordinance adopted in 2018; and
- Q. Based on the foregoing, the City Council finds that adoption of the proposed Ordinance is necessary to 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 September 9, 2019, 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. 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, Policy 15.9, “Wireless Telecommunications Facilities,” as may be amended from time to time by City Council resolution.

**SECTION 3. 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 4. Effective Date.** This ordinance shall take effect and be in force thirty (30) days after the date of its passage. 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 deputy city clerk shall post in the office of the city clerk a certified copy of

the full text of the adopted ordinance along with the names of the members voting for and against the ordinance.

**INTRODUCED AT A PUBLIC HEARING** on September 9, 2019, and adopted at a regular meeting of the Belvedere City Council on October 14, 2019 by the following vote:

**AYES:** Claire McAuliffe, James Campbell, Robert McCaskill and Mayor Nancy Kemnitzer

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

**APPROVED:**   
Nancy Kemnitzer, Mayor

**ATTEST:**   
Christina Cook, City Clerk