ORDINANCE NO. 3586 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE CHAPTER 38, ARTICLE 17, SECTION 112.4
PERSONAL WIRELESS SERVICE FACILITIES, MONTEREY CITY CODE CHAPTER 38,
ARTICLE 27 APPEALS, AND MONTEREY CITY CODE CHAPTER 38, ARTICLE 22,
SECTION 38-159 NOTICE AND PUBLIC HEARING

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the City of Monterey currently regulates the placement, design,
construction and modification of personal wireless service facilities in the City of Monterey;

WHEREAS, these regulations are designed to protect and promote public health,
safety, community welfare, aesthetics and the unique historic setting and views of the City,
which attributes benefit residents, attract visitors worldwide, and protect the City of Monterey
from financial loss;

WHEREAS, the City proposes to amend its ordinance to streamline permit review by
requiring all applications to be reviewed by the Planning Commission and eliminate the existing
Zoning Administrator review process;

WHEREAS, the City wants to ensure that the public has the maximum opportunity to
review applications and as a result changes to the City’s noticing requirements are proposed;

WHEREAS, the City of Monterey includes lands that are demarcated on the California
Public Utility Commission Fire Threat Map and the City proposes to require applicants to
acknowledge the fire threat map and provide a safety certification;

WHEREAS, updates are required to the current ordinance to reflect advances in cellular
technology, including "small cell" facilities. Amendments to the code section are necessary to
successfully communicate to prospective applicants, the public, City officials and City staff the
purpose of the code section, the submittal requirements, and the review and decision process;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on
September 28, 2018, took public testimony, held a discussion, and voted to recommend City
Council adoption of the Zoning Ordinance amendment; and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from
the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5)
because the project consists of a zoning ordinance amendment to modify existing regulations affecting personal wireless facilities, which would not result in any changes in density or traffic patterns. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The environment is not particularly sensitive because the project is purely a zoning ordinance amendment. Therefore, impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. No cumulative impact would occur because the project is purely a zoning ordinance amendment. Therefore, cumulative impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances with this project because the project is purely a zoning ordinance amendment. Therefore, significant impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The project is purely a zoning ordinance amendment, which would not damage scenic resources. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project is purely a zoning ordinance amendment. Therefore, impacts to hazardous waste sites would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.
Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The project is purely a zoning ordinance amendment. Therefore, impacts to historic resources would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 3. Section 38-112.4 is hereby repealed in its entirety and replaced with the following:

38-112.4 Personal Wireless Service Facilities

A. Purpose.

1. This section is enacted to reasonably regulate, to the extent permitted under California and federal law, the placement, design, construction, and modification of wireless facilities within the City of Monterey. These regulations are designed to protect and promote public health, safety, community welfare, aesthetics and the unique historic setting and views of the City, which attributes benefit residents, attract visitors worldwide, and protect the City of Monterey from financial loss.

2. This section is not intended to exempt personal wireless facilities from any applicable laws, and the standards herein shall be read so that:

   a. an application may be denied if granting it would result in contravention of any applicable law, including the Americans with Disabilities Acts; and

   b. any permit may be revoked, or shall be void as provided in Chapter 38, Art. 29 of this Code.

3. This section shall be interpreted and applied consistent with state and federal law.

4. Times for action under this ordinance are set to permit the City to comply with state and federal regulations governing time for action on wireless applications, and may be extended by the City Manager where extension will not result in a violation of those state or federal regulations, or otherwise prejudice the public.

B. Applicability—Exemptions.

1. Applicable Facilities. The provisions in this section shall be applied to all applications for new wireless facilities and all applications for changes to existing wireless facilities pending a final decision on or before the effective date of this section, unless the application qualifies for an exemption.
2. Exempt Facilities. The provisions in this section shall not be applied to applications for the following wireless facilities:

   a. Amateur radio antennas (including ham and shortwave).

   b. Over-the-air reception devices ("OTARDs") as defined in 47 CFR Section 1.4000 et seq., as may be amended or superseded, which include without limitation direct-to-home satellite antennas smaller than two feet in diameter.

   c. Wireless facilities owned and operated by the City for its use.

   d. Facilities owned and operated by California Public Utilities Commission-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

C. Prohibited Facilities. Any wireless facilities that do not comply with the most current regulatory and operations standards, including but not limited to radio frequency (RF) emission standards adopted by the FCC, are prohibited. Applicant is required to affirm, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC. Documentation shall be submitted proving that the permit applicant has whatever certificate or license the FCC requires to operate the facility.

D. Planning Applications and Approvals Required.

   1. Use Permit Review. All new wireless facilities and all substantial changes to existing wireless facilities shall first require an application for a use permit pursuant to Section 38-156 et seq. and approval by the Planning Commission.

   2. Section 6409(a) Approval. Any collocation or modification to an existing wireless tower or base station that qualifies as an eligible facilities request under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified as 47 U.S.C. Section 1455(a)) shall also require a written application. The application shall be subject to review by the Planning Commission pursuant to the review procedures in subsection (2)(a) of this subsection (D).

   a. Review Procedures for Section 6409 Applications.

      i. Section 6409(a) Approval Findings. The use permit for existing facilities will be reopened for review by the Planning Commission. The Planning Commission may grant a Section 6409(a) approval only when it finds all the following:

         I. The public notice required by law has occurred.

         II. The project involves the collocation, replacement or removal of transmission equipment on an existing wireless tower or base station.

         III. All prior regulatory approvals required for the initial construction and any later modifications to the tower or base station, if any, were properly obtained.
IV. The project would not substantially change the physical dimensions of the existing wireless tower or base station.

ii. Denied Applications for Section 6409(a) Approvals. Any denial of an application for Section 6409(a) approval shall be in writing, contain the reasons for the denial, and be without prejudice to the applicant or the project. The applicant may immediately submit an application for a use permit or a Section 6409(a) approval for substantially the same project; provided, however, that the applicant has paid all fees and costs payable to the City in connection with the previously denied application.

E. Applications and Submittals.

1. Application Content. The Planning Department shall develop and maintain detailed application submittal requirements, which shall be made available to the public, and shall be subject to review and oversight by the Planning Commission on an annual basis. All fees for application review shall be nonrefundable unless specifically provided otherwise in a resolution by the City Council. Applicants for a permit for a wireless facility shall, whether or not required by the Planning Department submittal requirements, and in addition to other requirements of this ordinance:

   (a) Provide Notice and Evidence of Notice. Applicant shall provide notice to all persons entitled to notice under Section 38-112.4.H.1.a in accordance with standards specified in the application form. Proof of notice shall be provided as part of the application.

   (b) Construct Mock-Up of Proposed Facility. Except for an eligible facilities request or where it is unnecessary to provide the community a fair opportunity to assess the impact of the facility, as part of the application the applicant shall construct a mock-up of each wireless facility proposed at a location accessible to the public in accordance with standards specified in the application form.

   (c) To the extent that filing of the wireless application establishes a deadline for action on any other permit that may be required in connection with the wireless facility, the application shall include complete copies of applications for every required permit, including without limitation electrical permits, building permits, traffic control permits, excavation permits, with all engineering completed, and with all fees associated with each permit.

   (d) Hazard Compliance Certification.

   (i) If the applicant proposes to deploy a wireless facility in a "High Hazard Zone" ("HHZ") (as demarcated on the current version of the California Public Utility Commission Fire-Threat Map) on a structure that applicant contends is or will be under the jurisdiction of General Order ("GO") 95 ("GO 95"), or GO 165, or GO 166, the applicant shall submit a sworn statements by qualified experts who shall attest in which specific HHZ the wireless facility will be located; whether the structure has been inspected; whether the structure and any existing facilities comply and whether any planned structures and facilities would comply with standards for placement on structures in an HHZ; and whether all required Fire Prevention Plans are in place. If existing or proposed structures or facilities are or will be non-compliant in any respect, the application shall identify steps proposed to ensure the structure and existing and proposed facilities are compliant.
(ii) For any application to deploy a wireless facility in an HHZ on a structure that applicant contends is not under the jurisdiction of GO 95, GO 165, and GO 166, the applicant shall submit documentation showing: (1) the specific HHZ in which the wireless facilities will be located, as demarcated on the current version of the California Public Utility Commission Fire-Threat Map; (2) a description of the steps the applicant has taken to reduce hazards to public safety, including fire safety hazards, that may be caused by the proposed wireless facility, and (3) the steps applicant proposes to take to maintain the safety of the wireless facility, which steps shall be at least as rigorous as if GO 95, 165, and GO 166 applied.

(e) Safety Certification. Applicant shall submit a certification by a registered and qualified engineer that the structure on which the wireless facility will be placed can safely support the wireless facility; and that all elements of the wireless facility comply with applicable safety standards.

(f) Electronic Copy of Application. The applicant shall provide an electronic copy of all application materials in a searchable format that can be posted online. The applicant may mark any sections as "confidential" for purposes of the online, publicly-available application copy, subject to state and federal law regarding public records.

2. Presubmittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a voluntary presubmittal conference with City staff for all wireless facilities applications. The presubmittal conference is intended to foster cooperative discussion between applicants and staff, identify potentially avoidable issues, and generally streamline the application review process to occur after the applicant formally submits its application. City staff will endeavor to provide applicants with an appointment between approximately five and fifteen (15) working days after a written request for an appointment is received.

3. Application Submittal Appointment. All applications for wireless permits shall be submitted to the City at a prescheduled appointment with the Community Development Director. During the Application Submittal Appointment, or thereafter, the Community Development Director shall review the application materials and determine whether the application is complete. If the application is found to be complete, the Community Development Director will refer the application to the Planning Commission. If the application is not complete, the Community Development Director shall issue in writing a denial of the application without prejudice to refiling, specifying the reasons for the denial, unless the omissions are corrected at the prescheduled appointment, or the Community Development Director determines that permitting submission of additional materials will not prevent the City from participating in a timely review of the application. If the wireless application is incomplete, all permits that must be acted upon by the same date as that application will also be deemed denied. Complete applications and fees associated with any permit that must be acted upon by the same date as the wireless application shall be filed on the same date as the application for a wireless permit, and if any is not included, or the application for that permit is incomplete and denied, both it and the wireless application shall be denied, without prejudice for refiling, unless the omissions are corrected at the prescheduled appointment, or the Community Development Director determines that permitting submission of additional materials will not prevent the City from conducting or the
public from participating in a timely review of the application. A denial may be appealed to the Planning Commission, but the appeal is limited to consideration of whether the application was properly denied.

4. Applications Available Online. The City shall cause to be posted on the Planning Commission website all complete applications upon filing, and communications regarding those filings (including additions and modifications to the filing). The City shall post notice promptly when the application is deemed "complete."

F. Design and Development Standards.

1. Preferred Designs. All applicants shall, to the extent feasible, collocate new facilities and substantial changes to existing facilities with existing wireless facilities. Collocations shall, to the extent feasible, be proposed on structures in accordance with the following preferences. The City prefers the following designs, ordered from most preferred to least preferred:
   
   a. Building-mounted facilities with rooftop-mounted antennas; then
   b. Building-mounted facilities with facade-mounted antennas; then
   c. Public rights-of-way facilities and non-communications utility facilities; then
   d. Freestanding tower facilities.

2. Preferred Locations. All applicants shall propose new facilities and substantial changes to existing facilities in locations according to the following preferences, ordered from most preferred to least preferred:
   
   a. City-owned or controlled parcels outside of open space districts, residential districts or the H-1, H-2, D-1 overlay zones; then
   b. Parcels in industrial districts; then
   c. Parcels in commercial districts.

3. Discouraged Locations. All applicants shall avoid proposing new facilities and substantial changes to existing facilities in the following locations:
   
   a. Open space districts;
   b. Residential districts; and
   c. H-1, H-2, D-1, and overlay zones.

4. General Design and Aesthetic Standards. All new facilities and substantial changes to existing facilities shall conform to the standards in this section.
   
   a. Concealment. Wireless facilities shall incorporate concealment measures sufficient to render the facility either camouflaged or stealth, as appropriate for the proposed location
and design. All facilities shall be designed to visually blend into the surrounding area in a manner compatible with the local community character.

b. Height. Wireless facilities shall not exceed the applicable height limit for structures in the applicable zoning district.

c. Setbacks. Wireless facilities may not encroach into any applicable setback for structures in the applicable zoning district.

d. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.

e. Noise. A wireless facility and all equipment associated with a wireless facility shall not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located. The approval authority body may require the applicant to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the approval authority deems necessary or appropriate to ensure compliance with the applicable ambient noise limit.

f. Lights. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and shall install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting shall use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.

g. Signs. No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

h. Fencing or Enclosures. Any fencing or enclosures proposed in connection with a wireless facility shall blend with the natural and/or manmade surroundings. Additional landscape features may be required to screen fences. Barbed wire, razor ribbon, electrified fences and similar measures for securing a wireless facility may not be appropriate, except when the applicant demonstrates that the need for such measures significantly outweighs the potential danger to the public.

i. Landscaping. Landscaping may be required to visually screen facilities from adjacent properties or public view or to provide a backdrop to camouflage the facilities. All proposed landscaping is subject to architectural review approval by the Community Development Director, unless the Community Development Director refers the landscaping plan to the Architectural Review Committee. Landscaping may be required for the purposes that include, but are not limited to, the following:
i. To preserve existing on-site and associated access way vegetation and trees to the extent feasible at all times before, during and after construction.

ii. To minimize disturbance of the existing topography.

iii. Plant additional trees and other vegetation around the facility, in the vicinity of the site, and along access roads where such vegetation is appropriate to provide screening of wireless facilities and related access roads.


a. General Design Preferences. All applicants shall, to the extent feasible, propose new non-tower facilities according to the following preferences, ordered from most preferred to least preferred:
   i. Completely concealed and architecturally integrated facade or rooftop-mounted base stations with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
   
   ii. Completely concealed new structures or appurtenances designed to mimic the support structure’s original architecture and proportions (examples include, but are not limited to, cupolas, steeple, chimneys and water tanks).

b. Rooftop-Mounted Equipment. The City may approve unscreened rooftop transmission equipment only when it expressly includes a condition of approval that such equipment is effectively concealed due to its low height and setback from the roofline.

c. Facade-Mounted Equipment. Applicants shall conceal all facade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The City may not approve any “pop-out” screen boxes unless such design is architecturally consistent with the original support structure. The City may not approve any exposed facade-mounted antennas, which includes exposed antennas painted to match the facade.

d. Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).


a. Impact on Public Use. The City shall not approve any facilities, or any equipment or improvements in connection with a facility, in the rights-of-way that unreasonably subject the public use to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction. As used in this subsection (F)(6)(a), the term “public use” includes physical travel and occupancy as well as social, expressive, and aesthetic functions.
b. Concealment. All facilities in the rights-of-way shall be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.

c. Underground Equipment. To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground when proposed in an area where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground its non-antenna equipment to the extent feasible, subject to the City's standard archaeological sensitivity practices. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection (F)(6)(c) is intended to require the applicant to install any electric meter required by the applicant's electrical service provider underground.

d. Ground-Mounted Equipment. To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The City may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:

i. Self-Contained Cabinet or Shroud. The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.

ii. Concealment. The City may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.

e. Pole-Mounted Equipment. All pole-mounted equipment shall be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way shall face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors shall be concealed from public view to the extent feasible.

i. Antennas. The City prefers compact radomes at top of the pole, preferably flush with the pole, rather than equipment that creates arms or hanging appendages. The antenna shall be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. A side-mounted antenna may be approved if the City determines that the side-mounted antenna would be more appropriate given the built environment, neighborhood character, and overall site appearance. GPS antennas shall be placed within the radome or directly above the radome not to exceed six inches. Pole-mounted antennas shall not increase the pole height by more than two feet and generally shall not exceed the diameter of the pole.
ii. Pole-Mounted Equipment Cabinets. When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch shall be concealed within an equipment cage not extending more than 10 inches beyond the pole centerline on either side. The equipment cage shall be nonreflective and painted, wrapped or otherwise colored to match the existing pole. All pole-mounted equipment shall be installed as flush to the pole as possible. Any standoff mount for the equipment cage may not exceed four inches and shall include metal flaps (or “wings”) to conceal the space between the cage and the pole.

iii. New and Replacement Poles. If an applicant proposes a new facility in the public rights-of-way, then the applicant shall use existing above-ground structures. Replacement of utility poles to support pole-mounted equipment shall be placed as close to the edge of the lot as possible and the centerline of the new pole shall be aligned with the centerlines of existing poles within the right-of-way. New poles within the right-of-way, such as monopoles, new streetlights and/or faux flag poles, are discouraged, especially where the appearance would be out of character with the surrounding area, and will be permitted only when the applicant demonstrates that no existing or replacement above-ground structures are available. If permitted, new poles shall utilize materials and colors similar to and compatible with existing streetlight or utility poles in the area so as to not be visually obtrusive. In addition, the approval authority may require the applicant to install a decorative or integrated pole designed to conceal the equipment.

iv. Decorative Light Poles. Pole-mounted facilities are prohibited on decorative light pole fixtures.

f. Non-reflective Finishes. All above-ground or pole-mounted equipment in the rights-of-way shall not be finished with reflective materials as approved by the approval authority.

7. Freestanding Tower Facilities.

a. General Design Preferences. All applicants shall, to the extent feasible and appropriate for the proposed location, design new towers according to the following preferences, ordered from most preferred to least preferred:

i. Faux architectural features including, but not limited to, sculptures, clock towers, and flagpoles; then

ii. Faux trees.

b. Tower-Mounted Equipment. All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants shall mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.

c. Ground-Mounted Equipment. Applicants shall conceal ground-mounted equipment with opaque fences or other opaque enclosures. The City shall require, as a condition of
approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.

d. Concealment Standards for Faux Trees. All permits for faux tree facilities approved under this section are subject to the following required conditions of approval:

i. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches;

ii. The canopy shall be naturally tapered to mimic the particular tree species;

iii. All tower-mounted equipment, including all antennas, equipment cabinets, cables, mounts and brackets, shall be painted flat natural colors to mimic the particular tree species;

iv. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage; and

v. The entire vertical structure shall be covered with permanently affixed three-dimensional faux bark cladding to mimic the particular tree species.

G. Abandoned or Decommissioned Facilities--Transfer of Ownership.

1. Procedures for Abandoned or Discontinued Facilities.

a. To promote the public health, safety and welfare, the Community Development Director may declare a facility abandoned or discontinued when:

i. The permittee notifies the Community Development Director that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or

ii. The permittee fails to respond within 30 days to a written notice sent by certified U.S. Mail, return receipt requested, from the Community Development Director that states the basis for the Community Development Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or

iii. After 10 years, when the permit expires, in the case where the permittee has failed to file a timely application for renewal.

b. After the Community Development Director declares a facility abandoned or discontinued, the permittee shall have 90 days from the date of the declaration (or longer time as the Community Development Director may approve in writing as reasonably necessary) to:

i. Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;

ii. Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences
use of the abandoned or discontinued facility; or

iii. Remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.

c. If the permittee fails to act as required in subsection (G)(1)(b) of this section within the prescribed time period, the City Council may deem the facility abandoned at a noticed public meeting. The Community Development Director shall send written notice by certified U.S. mail, return receipt requested, to the last-known permittee or real property owner that provides 30 days (or longer time as the Community Development Director may approve in writing as reasonably necessary) from the notice date to:

i. Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;

ii. Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or

iii. Remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.

d. If the permittee fails to act as required in subsection (G)(1)(c) of this section within the prescribed time period, the City may remove the abandoned facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The City Clerk shall cause the lien to be recorded with the County of Monterey Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Monterey Recorder's Office.

2. Transfer of Ownership. Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the City. The written notice required in this section shall include: (a) the transferee's legal name; (b) the transferee's full contact information, including a primary contact person, mailing address,
telephone number and email address; and (c) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in Section 38-221.

H. Notices--Findings--Decisions.

1. Notice.

   a. Notice Required for a Use Permit. The Planning Commission shall conduct a noticed public hearing in accordance with Section 38-159.

2. Use Permit Findings. In addition to the findings required by Section 38-161, the Planning Commission shall approve an application for a use permit if supported by substantial evidence, and on the basis of the application, plans, materials and testimony submitted, the Planning Commission finds:

   a. The facility is not detrimental to the public health, safety and welfare.

   b. The facility complies with all applicable design and development standards in the City Code.

   c. The facility is designed, constructed and operated in such a manner to minimize the amount of noise impacts to adjacent uses and activities and shall be in conformance with the General Plan and Zoning Ordinance noise exposure standards.

   d. The facility is designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight or attractive nuisances.

   e. The facility does not unreasonably impair or diminish views of and vistas from adjacent properties and designated scenic corridors.

   f. The facility is necessary or desirable for, and compatible with, the neighborhood or community. The City may consider a number of factors, which may include, but shall not be limited to, the proportionality and scale of the facility relative to the surrounding natural and/or manmade environment, the proximity of the facility to residential structures, the compatibility of the facility with uses on adjacent and nearby properties, the surrounding topography, the surrounding tree coverage and foliage, and the compatibility with the values and objectives expressed in the General Plan and any applicable specific plan.

3. Limited Exception to Required Findings.

   a. Effective Prohibition. In the event that an applicant alleges that strict compliance with any provision in the code would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant an exemption from any requirement in this section when an applicant for a personal wireless services facility demonstrates that a prohibition or effective prohibition in the provision of personal wireless services will result.
The applicant always bears the burden to demonstrate why an exemption should be granted.

b. Scope of Exemption. The exemption pursuant to subsection (H)(3)(a) of this section shall be (i) granted on a case-by-case basis; and (ii) narrowly tailored to minimize any deviation from the requirements in the code to the maximum extent feasible.

4. Written Decision. The reviewing authority shall send the applicant written notice that contains both the decision and the reasons for the decision.

5. Appeals. Subject to the applicable time frame for application review, and accounting for any tolling periods, any interested party may appeal an action of the Planning Commission to the City Council in accordance with Chapter 38, Article 27 for the limited purpose of challenging whether the Planning Commission properly approved or denied the application under the criterion set forth by this Chapter 38-112.4.

I. Independent Consultant Review.

1. Authorization. The City Council authorizes the City Manager or designee to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the City Manager or designee in connection with any permit application.

2. Scope. The City Manager or designee may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:

   a. Permit application completeness or accuracy;

   b. Planned compliance with applicable RF exposure standards;

   c. Whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;

   d. Whether technically feasible and potentially available alternative locations and designs exist;

   e. The applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and

   f. Any other issue that requires expert or specialized knowledge identified by the City Manager or designee.

3. Deposit. The applicant shall pay for the cost of such review and for the technical consultant's testimony in any hearing as requested by the City Manager or designee and shall provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. The applicant shall provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the City Manager or designee. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the City Manager or designee
shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required in the code.

J. Standard Conditions of Approval.


   a. Permit Term. Any validly issued conditional use permit or land use permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly 10 years and one day from the issuance date, except when California Government Code Section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.

   b. Code Compliance. The permittee shall at all times maintain compliance with all applicable Federal, State and local laws, regulations and other rules.

   c. Inspections—Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

   d. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department upon permittee’s receipt of the Planning Department’s written request, except in an emergency determined by the City when all such contact information for responsible parties shall be immediately provided to the Planning Department upon that person’s verbal request.

   e. Indemnities. The permittee and, if applicable, the nongovernment owner of the private property upon which the tower and/or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City’s approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one’s agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the property owner and/or permittee (as applicable) shall reimburse City for
any costs and expenses directly and necessarily incurred by the City in the course of the defense.

f. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.

g. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

h. Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permittee within 48 hours after notification from the City.

i. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other State or Federal government agency with the authority to regulate RF exposure standards.

j. Build-Out Period. As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.

k. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee’s files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.

2. Standard Conditions for Section 6409(a) Approvals.

a. No Permit Term Extension. The City’s grant or grant by operation of law of a Section 6409(a) approval constitutes a Federally mandated modification to the underlying permit or approval for the subject tower or base station. The City’s grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

b. Accelerated Permit Term Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that Federal law would not mandate approval for any Section 6409(a) approval, the permit or permits issued in connection with such Section 6409(a) approval shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) approval when it has submitted an application for either a conditional use permit or land use permit for those improvements before the one-year period ends. The Planning Department may extend the expiration date on the accelerated permit upon a written
request from the permittee that shows good cause for an extension.

c. No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.

d. Code Compliance. The permittee shall at all times maintain compliance with all applicable Federal, State and local laws, regulations and other rules.

e. Inspections—Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

f. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department upon permittee's receipt of the Planning Department's written request, except in an emergency determined by the City when all such contact information for responsible parties shall be immediately provided to the Planning Department upon that person's verbal request.

g. Indemnities. The permittee and, if applicable, the nongovernment owner of the private property upon which the tower and/or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

h. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
i. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

j. Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permittee within 48 hours after notification from the City.

k. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other State or Federal government agency with the authority to regulate RF exposure standards.

l. Build-Out Period. As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.

m. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee’s files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.

K. Definitions. Definitions in this section may contain quotations and/or citations to 47 CFR Section 1.40001 et seq. In the event that any referenced section is amended, creating a conflict between the quoted definition and the amended language of the referenced section, the definition in the referenced section, as amended, shall control. The following definitions only apply to this section, Personal wireless service facilities, and shall not be construed to define the same terms found in any other section of this code.

"Base station" means the same as defined by the FCC in 47 CFR Section 1.40001(b)(1), as may be amended, which defines that term as follows:

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 CFR Section 1.40001(b)(9)] or any equipment associated with a tower.

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

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

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

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

Note: As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

"Camouflaged" means a wireless facility to which the applicant applies some concealment techniques in order to blend the equipment into the surrounding area or to appear to be an object that is congruent with its environment, but the equipment or the concealment technique is readily apparent to the observer.

Examples include, but are not limited to: (1) facade- or rooftop-mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; or (3) faux trees either as the only tree in the vicinity or inconsistent with other tree species in the vicinity.

"Collocation" means the same as defined by the FCC in 47 CFR Section 1.40001(b)(2), as may be amended, which defines that term as “[t]he 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.

“Community Development Director” means the Community Development Director or the Director’s designee.

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

“Distributed antenna system” or “DAS” means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service.
providers. A distributed antenna system also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

"Eligible facilities request" means the same as defined by the FCC in 47 CFR Section 1.40001(b)(3), as may be amended, which defines that term as ":[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment."

"Eligible support structure" means the same as defined by the FCC in 47 CFR Section 1.40001(b)(4), as may be amended, which defines that term as ":[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section."

"Existing" means the same as defined by the FCC in 47 CFR Section 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) 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."

"FAA" means the Federal Aviation Administration or its duly appointed successor agency.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"OTARD" means antennas covered by the FCC's "Over-the-Air Reception Devices" rule in 47 CFR Section 1.4000 et seq., as may be amended.

"Personal wireless service facilities" means the same as provided in 47 U.S.C. Section 332(c)(7)(C)(ii), as may be amended, which defines the term as "facilities for the provision of personal wireless services."

"Personal wireless services" means the same as provided in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."

"Public rights-of-way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the City. Public right-of-way includes but is not limited to street, roadway, planter strip and sidewalk.

"Radome" means a weatherproofed enclosure (typically constructed from fiberglass or plastic material) that protects and conceals an antenna or antennas contained therein.

"RF" means "radio frequency" or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.
“Section 6409(a)” 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. Section 1455(a), as may be amended.

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

“Stealth” means concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.

Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying building in architectural style, physical proportion and construction-materials quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

“Substantial change” means the same as defined by the FCC in 47 CFR Section 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC’s criteria and thresholds for a substantial change according to the 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 percent 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 percent or 10 feet (whichever is greater); or
(b) The proposed collocation or modification increases the width more than six 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 10 percent 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 and 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 determined by the Director; 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 section.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet
any one or more of the applicable thresholds means that a substantial change would occur. The
thresholds for height increases are cumulative limits. For sites with horizontally separated
deployments, the cumulative limit is measured from the originally permitted support structure
without regard to any increases in size due to wireless equipment not included in the original
design. For sites with vertically separated deployments, the cumulative limit is measured from the
permitted site dimensions as they existed on February 22, 2012—the date that Congress passed
Section 6409(a).

"Tower" means the same as defined by the FCC in 47 CFR Section 140001(b)(9), as may be
amended, which defines that term as "[a]ny 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, mono-trees and lattice towers.

"Transmission equipment" means the same as defined by the FCC in 47 CFR Section
140001(b)(8), as may be amended, which defines that term as "[e]quipment 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."

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

"Wireless facility" or "wireless facilities" means a facility installation used or planned or designed for use in the provision of personal wireless services to transmit and/or receive signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities. Requirements with respect to a wireless facility extend to the structures to which wireless facilities are attached or proposed to be attached, except as the context requires otherwise.

SECTION 4. Chapter 38, Article 27, is hereby repealed in its entirety and replaced with the following:

CHAPTER 38, ARTICLE 27 - APPEALS

38-203 Purpose of Appeal

The purpose of the appeal procedure is to give interested parties an opportunity to appeal legislative, judicial, and quasi-judicial actions which have been delegated to the Planning Commission, various boards, commissions, and employees to the City Council.

38-204 Right of Appeal -- Planning Commission

Any order, requirement, decision, determination, interpretation, or ruling made by the Planning Commission in the enforcement or administration of this chapter may be appealed to the City Council pursuant to the procedures set forth in this Article. Only those matters which would become final if not appealed shall be subject to appeal. Recommendations and advisory opinions of the Planning Commission upon matters which the City Council has authority to take final action shall not be appealable.

38-205 Right of Appeal -- Administrative and Other Committee Decisions

Any order, decision, determination, interpretation, or ruling made by the Zoning Administrator, Architectural Review Committee, Historic Preservation Commission, Development Review Committee, officer, board, commission, or committee employee of the City authorized to enforce or administer this chapter may be appealed to the Planning Commission pursuant to the procedures set forth herein. Only those matters which would become final if not appealed shall be subject to appeal. Recommendations and advisory opinions upon matters which the Planning Commission has authority to act shall not be appealable.

38-206 Right of Appeal -- Interested Parties

Any interested party shall have the right of appeal.
38-207 Time for Filing

An appeal shall be filed or action taken pursuant to Section 38-208 herein within ten days from the date of final action, except for applications for wireless facilities. For a wireless facility application controlled by Chapter 38-112.4, any appeal shall be filed or action taken pursuant to Section 38-208 within three (3) business days from the date of the Planning Commission’s decision to approve or deny a wireless facility application. The purpose of this limitation is to ensure that any applicable federal or state deadlines for action on a wireless application are granted. The City Manager may extend the time for appeal to ten days from the date of the final action where the City Manager determines extension would not result in a violation of applicable law.

38-208 Notice of Appeal -- Form and Content

The notice of appeal shall be in writing and shall be filed in the Department of Plans and Public Works upon forms provided by the City. The notice of appeal must set forth specifically the grounds of appeal and the action that is requested, and staff shall work to ensure that appeals are allowed to proceed whenever possible. During the period and prior to filing a notice of appeal, an appellant shall obtain certification from the Public Works Director that the appeal is in order for Planning Commission, Architectural Review Committee, or City Council consideration (as applicable), and that, when applicable, all information and maps required in connection with the appeal have been filed with the City. Upon grant of certification of a Planning Commission appeal and upon payment of fees, the Public Works Director shall immediately transmit a copy to the City Clerk, who shall place said matter on the City Council agenda at the earliest possible time. Upon grant of certification of an administrative, Architectural Review Committee, or other committee decision appeal, the Public Works Director shall place said matter on the Planning Commission or Architectural Review Committee agenda at the earliest possible time.

38-209 Appeal by City Councilmember or City Manager; Review of Projects Requiring Environmental Impact Report (EIR)

Any City Councilmember or the City Manager may appeal a subordinate decision to the City Council for review on the basis that the determination affects, impacts, or deals with matters of general policy in the City, or may have a significant environmental, economic, or physical impact on a City facility or service. The general procedures of the Article shall apply, insofar as practical. However, there shall be no fee for such an appeal.

Any approved project which required certification of an Environmental Impact Report (EIR) by the Planning Commission shall be referred to the City Council for review at its next regular meeting. The City Council may elect to take no action, making the decision of the Planning Commission final, or, upon the request of any Councilmember, set the matter for hearing as an appeal, which shall be heard and determined in the same manner as other appeals taken pursuant to this Article.

38-210 Hearing Date -- Notice

A. Upon receipt of the notice of appeal, the City Council shall set the matter for hearing within 45 days from the date of the filing of the appeal and payment of fees, and shall give notice of the date, time, and place thereof to the applicant at least ten days prior to the date of the hearing; except that, for wireless facilities, notice will be provided at least three business days prior to the date of the hearing. The date of
hearing may be extended only upon written consent of the original applicant; however, once begun, a
hearing may be continued if the City Council or Planning Commission needs further information to
facilitate a fair and adequate determination of the appeal.

The City Clerk shall cause notice of the time, place, and purpose of the hearing to be given, as follows:

1. Publication of notice of hearing in a newspaper of general circulation in the City of Monterey not less
than five days prior to date of hearing, except that an appeal hearing for a wireless facility application
controlled by Chapter 31-112.4 shall be given not less than three business days prior to date of hearing.

2. Mailing notice as prescribed in Section 38-159.

Failure of parties to receive notice of hearing shall in no way affect the validity of action taken.

Prior to such hearing, a full record in writing shall be submitted to the City Clerk by the body whose action
is appealed setting forth reasons for the action taken, and said body shall further present at the hearing all
exhibits, notices, petitions, and other papers and documents on file with said body.

B. Upon receipt of the notice of appeal of an Architectural Review Committee or administrative action,
the Department of Plans and Public Works shall set the matter for hearing before the Planning
Commission within 45 days from date of the filing of the appeal and payment of fees, and shall give notice
of the date, time, and place thereof to the applicant, appellant, and to the body whose action is appealed
at least ten days prior to the date of the hearing. The date of hearing may be extended only upon written
consent of the original applicant; however, once begun, a hearing may be continued if the Planning
Commission needs further information to facilitate a fair and adequate determination of the appeal.

The Public Works Director shall cause notice of the time, place, and purpose of the hearing to be given,
as follows:

1. Publication of notice of hearing in a newspaper of general circulation in the City of Monterey not less
than five days prior to date of hearing.

2. Mailing of notice of appeal hearing consistent with current Architectural Review Committee
procedures for appeals of Architectural Review Committee action and administrative actions on
Architectural Review Committee matters.

3. Mailing of notice as prescribed in Section 38-159.

Failure of parties to receive notice of hearing shall in no way affect the validity of action taken.

Prior to such hearing, a full record in writing shall be submitted to the Public Works Director by the body
whose action is appealed setting forth reasons for the action taken, and said body shall further present at
the hearing all exhibits, notices, petitions, and other papers and documents on file with said body.

C. Upon receipt of the notice of appeal of an administrative action that involves architectural review
matters, the Department of Plans and Public Works shall set the appeal for hearing before the
Architectural Review Committee within 45 days from the date of the filing of the appeal and payment of
fees, and shall give notice of the date, time, and place thereof to the applicant, appellant, and to the administrator whose action is appealed consistent with current Architectural Review Committee procedures.

38-211 Authority of Appellate Body

Upon hearing the appeal, the City Council or Planning Commission shall consider the record and such additional evidence as may be offered and shall find whether, in its opinion, error was made. The City Council may affirm, reverse, or modify the action appealed as it deems just and equitable, and may exercise all rights of any other officer or commission. The City Council or Planning Commission shall transmit a copy of its decision to the applicant, appellant, and the body whose action is appealed within 30 days of hearing the matter.

SECTION 5. Chapter 38, Article 22, Section 38-159 is hereby amended to read as follows:

CHAPTER 38, ARTICLE 22 – SECTION 38-159

38-159 Notice and Public Hearing

A. Public Hearing Required. The Planning Commission or the Public Works Director, as the case may be, shall hold a public hearing on an application for a Use Permit or Variance in a timeframe as set forth by the Permit Streamlining Act.

B. Time of Hearing. Within 20 working days after acceptance of an application, the Public Works Director shall set a tentative time and place for a public hearing to be held within 60 days; provided that, for wireless facilities, the tentative time and place for the public hearing shall be set and noticed so that the hearing may be conducted at least forty (40) days prior to the date the City is required to take final action on the application.

C. Notice. Notice of the hearing shall be given in the following manner:

1. Mailed or Delivered Notice. At least 10 days prior to the hearing, notice shall be mailed to the applicant, affected agencies, anyone who made a request for a notice, and all owners of property 150 feet from each corner of the site and 300 feet of the boundaries of the site up and down both sides of the streets it fronts, as shown on the last equalized property tax assessment role.

2. Posted Notice. Notice shall be posted at the Department of Plans and Public Works and the Office of the City Clerk and on or adjacent to the project site.

3. Hearing Agenda. The public hearing agenda and packet of information shall be made available to the public in the Monterey Public Library three days prior to the public hearing.

D. Contents of Notice. The notice of public hearing shall contain:

1. A description of the location of the development site and the purpose of the application;
2. A statement of the time, place, and purpose of the public hearing;

3. A reference to application materials on file for detailed information; and

4. A statement that any interested person or an authorized agent may appear and be heard.

E. Multiple Applications. When applications for multiple Use Permits or variances on a single site are filed at the same time, the Public Works Director shall schedule a combined public hearing.

SECTION 6: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason declared unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its sections, subsections, sentences, clauses, or phrases.

SECTION 8: This ordinance shall be in full force and effect 30 days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 16th day of October, 2018, by the following vote:

AYES: 5 COUNCILMEMBERS: Albert, Barrett, Haffa, Smith, Roberson
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None
ABSTAIN: 0 COUNCILMEMBERS: None

APPROVED:

ATTEST:  

Mayor of said City

City Clerk thereof