

RESOLUTION NO. 20-65

A RESOLUTION OF THE CITY OF MALIBU ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS AND CONDITIONS OF APPROVAL FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Chapter 12.02 of the Malibu Municipal Code governs the permitting, installation, and regulation of personal wireless services facilities in the City's public right-of-way (ROW);

B. Section 12.02.050(D) provides that "[a]ll applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately though the resolution adopted by the City Council;"

C. The City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's character, making the regulation of wireless installations in the public rights-of-way necessary to protect and preserve the aesthetics in the community;

D. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations in the public rights-of-way;

E. The City also wishes to set standard conditions of approval applicable to wireless ROW permits; and

F. On December 9, 2020 the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards.

SECTION 2. Purpose The purpose of this document is to (1) establish design and location standards (Standards) for wireless facilities in the public right-of-way (ROW) within the City; and (2) set standard conditions of approval for Wireless ROW Permits (WRPs).

SECTION 3. Definitions For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 12.02.020 are incorporated by reference into this Resolution and in addition the following definitions apply:

A. "Pole-mounted facility" means a wireless facility that is, or is proposed to be, attached to or contained in a pole.

B. "Stealth facility" (or "stealth facilities") means a wireless facility designed to look like something other than a wireless tower or base station.

SECTION 4. General Standards for all Facilities The following standards shall apply to all wireless facilities in the ROW:

- A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.
- B. Prohibition of Generators. Permanent generators are prohibited.
- C. General Orders. All installations shall comply with applicable California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95, and, if stricter, the pole owner's safety standards. None of the engineering or design standards are meant to conflict with or cause a violation of CPUC General Orders. Accordingly, the Standards can be adjusted on a case-by-case basis if it is demonstrated that adjustment is necessary to ensure compliance with CPUC rules on safety.
- D. Electric Service. The permittee shall request that the permittee's electric service provider apply flat-rate billing for any proposed electric service, wireless smart metering or other alternative metering option that would obviate the need for an above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded "smart meter" that shall not exceed the width of the pole; provided, however that such smart meter shall be placed at least ten (10) feet above ground level. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal unless (1) the separate ground-mounted meter pedestal would be placed off the sidewalk and (2) the applicant demonstrates with clear and convincing evidence that all other alternatives for the electric meter are not available. All support equipment located within cabinets, shelters, or similar structures shall be screened from public view to the maximum extent feasible. Undergrounding of support equipment is required wherever practicable.
- E. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.

- F. Safety. All wireless facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the public use of the ROW; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the ROW. Further, all wireless facilities and associated equipment shall comply with Americans with Disabilities Act (ADA) requirements.
- G. Fire and Electrical Safety Standards. All wireless facilities shall contain:
1. A power shut off readily accessible to fire service personnel for emergencies;
  2. Surge protection for lightning discharge or other significant electrical disturbances;
  3. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or his or her designee; and
  4. Instructions for first responders to de-energize the equipment.
- H. Noise. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
- I. Lighting. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually operated emergency lights for use when official operating personnel are on site.
- J. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
- K. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant

shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090.

SECTION 5. Location Standards for All Facilities The location standards for all wireless facilities, other than those that qualify as eligible facilities requests, in the ROW are as follows:

- A. Spacing. Wireless facilities located adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan, shall not be located within six hundred (600) feet of any other wireless facility, unless a finding is made, based on technical evidence acceptable to the Planning Director, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision does not apply to wireless facilities located adjacent to any commercial zone district.
- B. Location preference for wireless facilities should be given to the following:
  - 1. Installations along major arterial roadways as depicted in Figure CI-1 of the City's General Plan.
  - 2. Facilities attached to existing utility poles or street lights, or sited adjacent to existing structures not used for human habitation or school grounds or to playgrounds or parks. Whenever possible, facilities shall be located on and/or inside existing structures.
  - 3. Sites that are not highly visible from adjacent roadways and do not obstruct views of impressive scenes off the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines.
  - 4. Unless otherwise indicated in this title, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
- C. Discouraged Locations/Zones.
  - 1. Wireless facilities that are within 250 feet from the property line of an open space or recreational area.
  - 2. Wireless facilities that are less than five hundred (500) feet from school grounds, playgrounds or parks.

3. Wireless facilities that are less than four hundred fifty (450) feet from any other existing wireless facility within or adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan.

D. Placements shall not be in front of dwelling units or schools.

SECTION 6. Undergrounding Standards for All Facilities With regard to undergrounding wireless facilities, the following standards apply:

- A. Equipment, including remote radio units (RRUs) that cannot be placed with the antenna in the shroud, must be placed underground, subject to Section 7(B) below. Vaults and pull boxes shall be installed flush to grade.
- B. Ground-mounted equipment is prohibited unless required for technical reasons.
  1. If required, ground-mounted wireless facilities shall be located near existing structures or trees at similar heights for screening purposes. The equipment shall be enclosed in cabinets, sized only for the necessary equipment. Further, if ground mounted, the antennas, equipment, cabinet and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility. As such, ground-mounted equipment shall be stealth.
  2. The ground-mounted equipment must not obstruct ocean views.
  3. Not more than one ground-mounted antenna shall be permitted on each site.

SECTION 7. Design Standards for all Facilities The general design standards for wireless facilities in the ROW are as follows:

- A. Materials. The materials used shall be non-reflective and non-flammable.
- B. Cabinet doors must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- C. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events.

- D. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.
- E. Stealth. The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:
1. Radio frequency (RF) transparent screening or shrouds;
  2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
  3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
  4. Minimizing the size of the site;
  5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
  6. Using paint of durable quality.
- F. Curb Setback Requirements. New or replacement poles shall be a minimum of 18 inches from the face of the curb.
- G. Collocation. The City has a preference for the use of existing infrastructure. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to collocate by the City and if possible to do so.
- H. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.
- I. Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

SECTION 8. Engineering and Design Standards for Pole-Mounted Facilities In addition to the generally applicable standards set forth above, the design standards for pole-mounted facilities in the ROW are as follows:

A. Facilities on Streetlight Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
2. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
3. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
4. Cables and Wiring. All cables and wiring must be within the pole.

B. Facilities on Wood Utility Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.
2. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
  - a. Side-mounted Facilities. Antennas and RRUs shall be mid-pole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the RRUs should be stacked vertically and close together with minimal distance from the pole.
    - (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
    - (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not

project from the pole more than 30 inches. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.

b. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud.

(1) Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.

(a) Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.

3. Cables and Wiring. All cables and wiring must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

C. Replacement Poles. If an applicant proposes or is required to install a replacement pole to accommodate the proposed facility:

1. Placement. A replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.

2. Design. Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced.

3. Cables and Wiring. All cables and wiring on non-wood poles must be within the structure. All cables and wiring on wood poles must be within conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

4. Stealth. The facility should be stealth, as defined above in Section 4(B).

D. New (Non-Replacement) Poles.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.



2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth, as defined above in Section 4(B).

#### SECTION 9. Exceptions to These Standards

- A. An exception may be granted to one or more of these Standards in the following circumstances:
  1. Pursuant to MMC Section 12.02.050(E), if an applicant demonstrates to the Director or Hearing Officer in writing with clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to MMC Section 12.02.050(E) shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of these Standards are waived only to the minimum extent required to avoid the prohibition or violation.
  2. If an applicant demonstrates to the Director or Hearing Officer with clear and convincing evidence set forth in a feasibility study that compliance with a requirement of the policy would be technically infeasible and the proposed wireless facility complies with the requirements of this policy to the greatest extent technically feasible. For example, an exception to a requirement to conceal antennas in a shroud may be granted if shrouding is shown to be technically infeasible and an alternative concealment such as

a colored film wrap is proposed. As another example, an exception to the volume limitation for antennas in a single shroud may be granted if the applicant can demonstrate that a greater volume is technically required, and that it is using the smallest, technically feasible engineering and design for providing personal wireless services, taking into account the other requirements of these Standards; or

3. If an applicant demonstrates to the Director or Hearing Officer in writing and based on clear and convincing evidence that the particular engineering, design or location proposed involves only minor non-compliance with a requirement of these Standards but such non-compliance either results in no increase in visual harms to the community or provides other benefits. For example, an exception to the antenna or equipment size or volume limitations may be granted when the applicant can demonstrate that because of the proposed location of the wireless facility away from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public ROW, any additional visual and physical impacts of the larger wireless facility would be insignificant. As another example, an exception to the wireless facility location limitations may be granted when the applicant can demonstrate that the placement is less visible from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public right-of-way, or is less physically intrusive (for example, less impactful to tree roots or reduces noise), or the applicant can demonstrate that in a multi-site deployment, the placement would reduce the overall number of sites needed and be no more visible or physically intrusive than placement in accordance with the wireless location criteria. Among other factors, in deciding whether or not to grant an exception, the Director may consider the impact of expansions to the facility that the applicant would be entitled to make as of right if granted.
- B. Factors to be addressed in a feasibility study requesting an exception to undergrounding requirements based on feasibility shall include but are not limited to construction impacts (including duration and extent of excavation and soil disturbance); traffic and pedestrian impacts (including impediments to access during construction and maintenance, or permanent impediments due to the nature of particular equipment); operational challenge (such as water, heat, or maintenance complications affecting network reliability); noise impacts (such as venting and pumping which may be required in some instances); cost impacts; aesthetic considerations; and permanent impacts to the integrity and future capacity of public ROW.

- C. Exceptions must be requested at the time an application is initially submitted for a WRP. The request must include both the specific provision(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the Director has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for exception from one or more requirements does not relieve the applicant from compliance with all other applicable provisions of law or of these Standards.

SECTION 10. Standard Conditions of Approval for Permits Under MMC Chapter 12.02

- A. **Generally.** In addition to any supplemental conditions imposed by the Director of Planning or the Hearing Officer, as the case may be, all permits under MMC Chapter 12.02 shall be subject to the following conditions, unless modified by the approving authority:
1. The permittee, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project or seeks to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
  2. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on \_\_\_\_\_. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
  3. The permit and rights conferred in this approval shall not be effective until the permittee signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of any wireless ROW, building, electrical or encroachment permit.

4. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 5 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
5. This Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.
6. A WRP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless ROW permit shall automatically expire, unless an extension or renewal has been granted. A person holding a WRP must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
7. The installation and construction authorized by a WRP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
8. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a WRP, if the Planning Director

finds that the conditions, including but not limited to changes in the wireless ordinance under which the WRP approval was issued, have not significantly changed.

9. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
10. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City, shall be secured.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.

#### Cultural Resources

12. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
13. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

14. All antennas shall meet the minimum siting distances to public/uncontrolled areas required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
15. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
16. All antennas, equipment, and support structures shall be engineered and designed to prevent unauthorized climbing.
17. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards.
18. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards.
19. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
20. The installation of a permanent onsite generator and/or other equipment is prohibited. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.

21. All pole-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
22. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. 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. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
23. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
24. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
25. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall

be paid when the security is posted and during each administrative review.

26. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WRP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.
27. The permission granted by a WRP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a WRP or the issuance of any other permit or exercise of any privilege given thereby.
28. No possessory interest is created by a WRP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WRP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this WRP.
29. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.



30. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
31. If a facility is not operated for a continuous period of three (3) months, the WRP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
32. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

Construction

33. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes.

Site Specific Conditions

34. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
35. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; (b) undergrounding all equipment to the extent possible; and (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements.
36. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval,

who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

37. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.
38. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
39. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.

40. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
41. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
42. Build-Out Conditions.
  - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
  - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
43. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
44. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
45. 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 at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
46. 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.

47. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
48. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

#### Prior to Operation

49. The applicant shall request a final Planning Department inspection immediately after the wireless facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.
50. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.
51. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City.

### Fixed Conditions

52. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

### Eligible Facilities Requests

In addition to all of the other conditions of approval placed on a WRP, all permits for an eligible facilities request under MMC Chapter 12.02 shall be subject to the following additional conditions, unless modified by the approving authority:

53. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
54. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
55. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

### Small Cell Facilities

In addition to the other conditions of approval placed on a WRP, all permits for a small cell facility under MMC Chapter 12.02 shall be subject to the following additional condition, unless modified by the approving authority:

56. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 11. Environmental Review

This Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Resolution is a "project" within the meaning of State CEQA Guidelines section 15378, the Resolution is exempt from CEQA on multiple grounds. First, the Resolution is exempt CEQA because the City Council's adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Resolution is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

SECTION 12. This Resolution will become effective immediately upon adoption.

SECTION 13. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 9th day of December 2020.

\_\_\_\_\_  
MIKKE PIERSON, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-65 was passed and adopted by the City Council of the City of Malibu at the Special meeting thereof held on the 9<sup>th</sup> day of December 2020 by the following vote:

AYES:           5           Councilmembers:    Farrer, Mullen, Wagner, Peak, Pierson  
NOES:           0  
ABSTAIN:       0  
ABSENT:        0

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HEATHER GLASER, City Clerk  
(seal)