

**RESOLUTION NO. 2026- \_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF A LOCAL COASTAL PROGRAM AMENDMENT TO THE CALIFORNIA COASTAL COMMISSION TO AMEND CHAPTER 21.49 (PERSONAL WIRELESS SERVICE FACILITIES) IN TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TELECOMMUNICATION FACILITIES**

**WHEREAS**, Section 200 of the City Charter, of the City of Newport Beach (“City”), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California (“State”);

**WHEREAS**, Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program (“LCP”) for that portion of the coastal zone within its jurisdiction;

**WHEREAS**, the California Coastal Commission effectively certified the City’s LCP Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) to the Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit issuing authority on January 30, 2017;

**WHEREAS**, 47 U.S.C Section 332(c)(7)(B) prohibits state or local governments from regulating the placement or modification of personal wireless service facilities that have the effect of prohibiting personal wireless services;

**WHEREAS**, 47 U.S.C. Section 332(c)(7)(B)(iv) prohibits state or local governments from regulating the placement of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission’s (“FCC”) regulations concerning such emissions;

**WHEREAS**, the FCC issued a Declaratory Ruling and Third Report and Order on September 26, 2018, (“Declaratory Ruling”) adding 47 C.F.R. Sections 1.6001 to 1.6004 which adopted new rules substantially revising local authority to regulate the deployment of small wireless facilities;

**WHEREAS**, portions of the Declaratory Ruling, including the establishment of new 60 day and 90 day presumptively reasonable periods in which a city must act upon proposed small wireless facilities, were upheld in *City of Portland v. FCC*, 969 F.3d (9th Cir. 2020);

**WHEREAS**, the Telecommunications Act of 1996 preempts and declares invalid state rules that have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service;

**WHEREAS**, the California Legislature delegated to the California Public Utilities Commission (“CPUC”), the authority to regulate local telephone competition and issue certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service;

**WHEREAS**, Section 2902 of the California Public Utilities Code authorizes cities to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets and the location of the poles, wires, mains, or conduits on, under, or above any public streets;

**WHEREAS**, Section 7901 of the California Public Utilities Code (“Section 7901”) authorizes telephone and wireless corporations to construct telephone or wireless telecommunication lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, provided they do not to incommode the public use of the road or highway or interrupt the navigation of the waters;

**WHEREAS**, Section 7901.1 confirms the right of municipalities to exercise reasonable control of the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees;

**WHEREAS**, the courts have determined that a city may regulate the placement and appearance of telecommunications equipment installed in the public right-of-way, and that the city need not grant wireless providers blanket permission to install their equipment throughout a city, but may require wireless providers to go through reasonable site-specific permitting process procedures;

**WHEREAS**, Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes;

**WHEREAS**, 47 of U.S.C. Section 1455 requires approval of certain eligible facilities requests for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such wireless tower or base station;

**WHEREAS**, under the police power of Article XI, section 7 of the California Constitution, confirmed in *T-Mobile West LLC v. City and County of San Francisco*, 6 Cal. 5th 1107 (2019), cities retain the full authority to regulate telecommunication facilities in the right-of-way to the extent such regulations are not inconsistent with general laws;

**WHEREAS**, cities also retain all local zoning powers not specifically preempted by federal law, which is confirmed by *T-Mobile S., LLC v. City of Roswell*, 574 U.S. 293, 303 (2015);

**WHEREAS**, unregulated wireless service facilities may cause visual blight and diminution of property values absent reasonable standards;

**WHEREAS**, it is in the public interest to encourage wireless facilities to be located in non-residential zones and in locations other than areas immediately nearby residences and that such facilities blend in with the urban landscape;

**WHEREAS**, it is in the public interest for the City to update its regulations in a manner consistent with applicable law, including establishing reasonable regulations to promote and protect the City's aesthetic values by regulating the time, place, and manner of installation of personal wireless facilities;

**WHEREAS**, Chapter 20.49 (Wireless Telecommunications Facilities) of the NBMC regulating wireless telecommunications facilities was last comprehensively updated in 2014 with a subsequent incorporation of Chapter 21.49 (Wireless Telecommunications Facilities) of the NBMC to regulate such facilities in the coastal zone;

**WHEREAS**, the City Council adopted Resolution No. 2021-42 on May 25, 2021, initiating updates to Title 20 (Planning and Zoning) (“Zoning Code Amendment”) and Title 21 (Local Coastal Program Implementation Plan) (“LCP Amendment”) of the NBMC related to wireless service facilities in the right-of-way;

**WHEREAS**, the telecommunications and wireless landscapes continue to evolve with demand shifting decisively from traditional voice service to data-driven connectivity, with users now expecting high-bandwidth, seamless, and low-latency performance to support streaming, remote work, and real-time communication;

**WHEREAS**, the widespread decline of landlines and increased reliance on cellular networks have placed greater pressure on wireless infrastructure, while the proliferation of tablets, connected vehicles, and other smart devices has expanded both the number and diversity of devices competing for network capacity;

**WHEREAS**, as technology continues to advance at a rapid pace, these trends underscore the importance of maintaining regulatory and permitting processes that are clear, adaptable, and forward-looking, while preserving the City’s ability to exercise thoughtful local oversight;

**WHEREAS**, the City Council conducted a study session regarding wireless facilities on January 13, 2026, wherein staff presented a three-pronged approach to enhance community connectivity through code updates, policy updates and partnerships to enhance connectivity within the community;

**WHEREAS**, pursuant to Section 13515 of the California Code of Regulations, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (Public Participation), drafts of the LCP Amendment were made available on February 26, 2026, and a Notice of Availability was distributed at least six weeks prior to the final action date; and

**WHEREAS**, a public hearing was held by the Planning Commission on March 5, 2026, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California to consider revisions to Chapters 20.49 (Wireless Telecommunication Facilities) and 21.49 (Wireless Telecommunication Facilities). A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

**WHEREAS**, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2026-006 by a unanimous vote (6 ayes, 0 nays, 1 absent) to recommend that the City Council approve revisions to Chapters 20.49 (Wireless Telecommunication Facilities) and 21.49 (Wireless Telecommunication Facilities), and Resolution No. PC2026-007 to authorize staff to submit the LCP Amendment to the California Coastal Commission; and

**WHEREAS**, a public hearing was held on June 9, 2026, by the City Council in the Council Chambers at 100 Civic Center Drive, Newport Beach, California to consider the LCP Amendment. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council finds the LCP Amendment is a legislative act. Neither Title 21 of the NBMC nor California Government Code Section 65000 *et seq.*, sets forth any required findings for either approval or denial of the LCP Amendment.

**Section 2:** Notwithstanding the above, the City Council does hereby make the findings attached hereto as Exhibit "A" and authorizes staff to submit this LCP Amendment to update regulations related to personal wireless service facilities, as set forth in Exhibit "B," both of which are attached hereto and incorporated by reference, to the California Coastal Commission for review and approval.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 4:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.



## **EXHIBIT "A"**

### **Findings for Approval**

#### General Finding:

An amendment to the City's Local Coastal Program ("LCP") is a legislative act. Neither Title 21 (Local Coastal Program Implementation Plan) nor California Government Code Section 65000 *et seq.*, set forth any required findings for approval of such amendments. Notwithstanding the foregoing, the following amendment to the Implementation Plan of the City's LCP will harmonize and balance the need for personal wireless facilities with coastal resources, coastal access, and other important components of the California Coastal Act, as follows:

#### Findings and Facts in Support of Finding:

1. Since the City's last comprehensive update in 2014, the telecommunications landscape has evolved significantly, with demand shifting from traditional voice service to high-capacity, data-driven connectivity. Increased reliance on cellular networks, the proliferation of connected devices, and advancements in wireless technology have intensified the need for reliable infrastructure, underscoring the importance of maintaining regulatory and permitting processes that are clear, adaptable, and consistent with the City's authority to provide thoughtful local oversight.
2. It is in the public interest for the City to update its regulations in a manner consistent with applicable law, including establishing reasonable regulations to promote and protect the City's aesthetic values by regulating the time, place, and manner of installation of personal wireless facilities. Unregulated wireless service facilities tend to cause visual blight and diminution of property values.
3. The regulations contained in Exhibit "B" are designed to protect and promote the public health and safety while preserving the City's unique coastal resources, public access, sensitive habitats, public views and scenic qualities as set forth within the goals, objectives and policies of the General Plan, Coastal Land Use Plan, Local Coastal Program, and California Coastal Act.
4. The LCP Amendment retains a hierarchy of installation types with the least obtrusive (i.e., "Class 1 Stealth Facilities") being most preferred and the most obtrusive (i.e., "Class 4 Freestanding Facilities") being least preferred. Furthermore, in the public right-of-way (i.e., "Class 3 Public Right-of-Way Facilities"), wireless service facilities are encouraged on existing structures or on "in-kind" replacement structures in the same location. Therefore, the visual quality of the Coastal Zone remains protected while safeguarding against any diminishment. A public view analysis is required consistent with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC.

5. With the LCP Amendment, wireless service facilities continue to be prohibited Within any environmentally sensitive habitat areas, wetlands, or bluffs as well as on any beach or between the sea and first public road paralleling the sea, unless personal wireless service facilities are collocated on an existing utility tower within a utility easement area, or collocated on an existing facility; or other existing building.
6. The LCP Amendment does not change the maximum allowable height for wireless service facilities.
7. The LCP Amendment meets the requirements of, and is in conformance with, the goals, objectives, and purposes of the Coastal Land Use Plan (“CLUP”) of the LCP. Updated standards and regulations specific to personal wireless service facilities ensure compliance with federal and state law while maintaining design and safety standards in the City’s jurisdiction of the Coastal Zone, which advance overarching goals of protecting coastal resources. While not an exhaustive list, this LCP Amendment is in furtherance of the following CLUP policies:
  - a. 3.1.1-11. *Require new development to minimize impacts to public access to and along the shoreline.*
  - b. 3.1.1-12. Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.
  - c. 4.1.1-4. Protect ESHAs against any significant disruption of habitat values.
  - d. 4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.
  - e. 4.4.1-1. Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.
  - f. 4.4.1-2. Design and site new development, including landscaping, so as to minimize impacts to public coastal views.
  - g. 4.4.1-3. Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.
  - h. 4.4.1-11. Restrict development on sandy beach areas to those structures directly supportive of visitor-serving and recreational uses, such as lifeguard

towers, recreational equipment, restrooms, and showers. Design and site such structures to minimize impacts to public coastal views.

- i. 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following site.
- j. 4.4.2-2. Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.
- k. 4.4.4-1. Design and site signs, utilities, and antennas to minimize visual impacts to coastal resources.

## EXHIBIT “B”

### Chapter 21.49 PERSONAL WIRELESS SERVICE FACILITIES

#### Sections:

- 21.49.010 Purpose.
- 21.49.020 Definitions.
- 21.49.030 Applicability.
- 21.49.040 Site Location Preference and Prohibited Locations.
- 21.49.050 Design Standards.

#### **21.49.010 Purpose.**

The purpose and intent of this chapter is to establish reasonable and uniform standards and procedures for personal wireless service facilities deployment, construction, installation, collocation, modification, operation, relocation and removal on all property within the coastal zone including the public right-of-way, consistent with and to the extent permitted under federal and state law. The requirements of this chapter are intended to protect and promote the public health and safety while preserving the City’s unique coastal resources, public access, sensitive habitats, public views and scenic qualities as set forth within the goals, objectives and policies of the General Plan, Coastal Land Use Plan, Local Coastal Program, and California Coastal Act.

#### **21.49.020 Definitions.**

The abbreviations, phrases, terms, and words shall have the meanings assigned to them in this section or as may be appropriate in Chapter 21.70, as may be amended, unless context indicates otherwise. Undefined phrases, terms or words in this section shall have the meanings assigned to them in 47 U.S.C. Section 702, as may be amended, and, if not defined therein, shall have their ordinary meanings. If any definition assigned to any phrase, term, or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition shall control.

“Antenna” as used in this chapter, means the same as defined in 47 C.F.R. Section 1.6002(b), as may be amended or superseded, which currently defines the term as an apparatus designed for the purpose of emitting radiofrequency (“RF”) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

“Antenna array” means antennas having transmission and/or reception elements extending in more than one (1) direction, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support structure, all of which elements are deemed to be part of the antenna.

“Base station” means the same as defined in 47 C.F.R. Section 1.6100(b)(1), as may be amended or superseded, which currently defines that term as structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Section 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under this section, supports or houses equipment described in 47 C.F.R. Section 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment described in 47 C.F.R. Section 1.6100(b)(1)(i)-(ii).

“City-owned” or “City-held trust property” means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City’s jurisdiction, including but not limited to City Hall, police and fire facilities, recreational facilities, parks, beaches, and libraries.

“Collocation” means (a) for the purposes of any eligible facilities request, the same as defined by 47 C.F.R. Section 1.6100(b)(2), as may be amended, which currently defines the term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, “collocation” as defined herein, effectively means “to add” and does not necessarily refer to more than one (1) personal wireless service facility installed at a single site; and (b) for all other purposes, has the same definition as is found in 47 C.F.R. Section 1.6002(g), as may be amended, which defines the term as (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an

antenna facility on that structure.

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

“Distributed antenna system (“DAS”) means a network of one (1) or more antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one (1) or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

“Eligible facilities request” means the same as defined in 47 C.F.R. Section 1.6100(b)(3), as may be amended, which currently defines that term as any 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) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

“Existing” means the same as defined in 47 C.F.R. Section 1.6100(b)(5), as may be amended. A constructed tower or base station is existing for purposes of this section 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.

“Facility class(es)” refers to the classes of personal wireless service facilities and the attendant support equipment, which are categorized as follows:

1. Class 1 (Stealth/Screened): a stealth personal wireless service facility with antennas mounted on an existing or proposed nonresidential building or other structure not primarily intended to be an antenna support structure where antennas and support equipment, including the base station, are fully screened from public view.
2. Class 2 (Visible Antennas): a personal wireless service facility with antennas mounted on an existing nonresidential building, structure, pole, light standard, utility tower, wireless tower and/or lattice tower outside of the public right-of-way.
3. Class 3 (Public Right-of-Way Installations): a personal wireless service

facility with antennas installed on a structure located in the public right-of-way, regulated by Chapter 13.22.

4. Class 4 (Freestanding Structure): a personal wireless service facility with antennas mounted on a new freestanding structure, including but not limited to, a faux tree, a monopole or lattice tower, constructed for the sole or primary purpose of supporting the personal wireless service facility.
5. Class 5 (Temporary): a personal wireless service facility including associated support equipment that is installed at a site on a temporary basis pursuant to a limited term permit or in connection with a special event upon the approval of a special event permit pursuant to Chapter 11.03 (Special Events).

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

“Feasible” or “feasibly” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

“Lattice tower” means a freestanding open framework structure used to support antennas, typically with three or four support legs of open metal crossbeams or crossbars.

“Monopole” means a single freestanding pole or pole-based structure solely used to act as or support a telecommunication antenna or antenna arrays.

“OTARD” means an over-the-air reception device subject to 47 C.F.R. Section 1.4000 *et seq.*, as may be amended, and which currently includes, without limitation, satellite television dishes not greater than one meter in diameter.

“Permittee” means the owner of a personal wireless service facility that has obtained permission through issuance of a permit or pursuant to this chapter to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities on private property.

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

“Personal wireless service facility(ies)” or “facility(ies)” means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(ii), as may be amended, which currently defines the term as facilities that provide personal wireless services.

“Public right-of-way” means the same as defined in Section 13.20.20 of this Code, which currently defines the term as the improved or unimproved surface of and the space above and below a City easement for public utility purposes, or street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use now or hereafter held by the City, however acquired.

“Section 6409(a)” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb. 22, 2012), codified as 47 U.S.C. Section 1455(a), as may be amended.

“Section 6409(a) facility(ies)” or “6409(a) facility(ies)” means an eligible facility request approved pursuant to Section 6409(a).

“Stealth” or “stealth facility” means a personal wireless service facility in which the antenna, and the support equipment, are completely hidden from view such as in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average reasonable observer do not qualify within this definition. For example, an artificial tree may not be considered to be a stealth facility.

“Substantially change” or “substantially change the physical dimensions” means the same as interpreted by applicable courts and in 47 C.F.R. Section 1.6100(b)(7), as amended, which currently states that a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
- (a) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of

originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than thirty (30) feet in any direction. The site boundary from which the thirty (30) feet is measured excludes any access or utility easements currently related to the site;
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, unless the modification meets all of the criteria in subsections (i)-(v) or, as amended 47 C.F.R. Section 1.6100(b)(7)(i)-(iv).

“Support equipment” means the physical, electrical and/or electronic equipment included within a personal wireless service facility used to house, power, and/or contribute to the processing of signals from or to the facility’s antenna or antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support equipment does not include DAS, antennas or the building or support structure to which the antennas or other equipment are attached.

“Tower” means the same as defined in 47 C.F.R. Section 1.6100(b)(9), as amended, which currently defines the term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including,

but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

“Transmission equipment” means the same as defined in 47 C.F.R. Section 1.6100(b)(8), as amended, which currently defines the term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Unlicensed wireless service” means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(iii), as amended which currently defines the term as the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in 47 U.S.C. Section 303(v)).

“Utility pole” means a single freestanding pole used to support services provided by a public or private utility provider.

“Utility tower” shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

### **21.49.030 Applicability.**

A. **Applicable Facilities.** This chapter applies to all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy personal wireless service facilities in the City’s coastal zone that constitute development as defined in Chapter 21.70 and requires either: (1) a de minimis waiver pursuant Section 21.52.055; or (2) a coastal development permit pursuant to Chapter 21.52, consistent with the provisions of this Implementation Plan.

B. **Exempt Facilities.** Notwithstanding subsection (A) of this section, the provisions in this chapter shall not be applicable to any of the following:

1. Amateur radio facilities;
2. OTARD antenna(s);
3. Personal wireless service facility installed completely indoors and not visible

to the public intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system);

4. Personal wireless service facility or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-E, as may be amended;

5. During an emergency, upon following the requirements of Section 21.52.025, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a personal wireless service facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause;

6. The replacement of a personal wireless service facility within the public right-of-way is exempt, provided that the facility will be mounted to an existing structure or a replacement structure sited within three (3) feet of the existing location if the replacement location and all permits required in Chapter 13.22 are obtained and would not result in impacts to public access, scenic resources, environmentally sensitive habitat area (ESHA), and other coastal resources;

7. Personal wireless service facility or associated infrastructure that is developed, installed, managed, or operated by the City, for the City, or under the City's direction, or located on City-owned or City-held trust property, or in which the City maintains a legal or equitable interest and installed pursuant to a lease, license, franchise agreement or other agreement between the City and any third party (whether public or private); and

8. Personal wireless service facility, 6409(a) facility or portion thereof, that is preempted by, or would otherwise violate, applicable federal or state law. Notwithstanding the foregoing, an exempt personal wireless facility shall be subject to the Director's determination that it be designed to minimize the extent of the non-conformity with the Code.

The exemptions provided herein shall not exempt the same personal wireless service facility from the requirements in Title 15.

C. Other Permits and Regulatory Approvals. In addition to any permit required under this chapter, the applicant must obtain and comply with all other required authorizations and permits and all other regulatory approvals from all City departments, and state and federal agencies.

D. Proprietary Approvals. Nothing in this chapter shall be deemed to waive any required proprietary approvals for siting of personal wireless service facilities on privately or publicly owned property or improvements.

E. Non-Exclusive Grant. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

F. Regulations Not in Conflict or Preempted. Any personal wireless service facility within the coastal zone shall comply with the following requirements unless in conflict with the provisions of this chapter or preempted by state or federal law:

1. Notwithstanding any other portion of this Section 21.49.030, the personal wireless service facility is not exempt from compliance with the general development and design standards in Section 21.49.050.
2. All applicable City design guidelines and standards.
3. Requirements established by any other provision of this Implementation Plan and by any other ordinance and regulation of the City.

G. Legal Nonconforming Facility. Any personal wireless service facility that was lawfully constructed, erected, or approved prior to <DATE OF EFFECTIVENESS>, that is operating in compliance with all applicable laws, and which facility does not conform to the requirements of this chapter shall be deemed a legal nonconforming facility. Legal nonconforming facilities shall comply at all times with the laws, ordinances, regulations, and any conditions of approval in effect at the time the facility was approved, and any regulations pertaining to legal, nonconforming uses or structures that may be applicable pursuant to provisions of this Code or federal and state law as they may be amended.

#### **21.49.040 Site Location Preference and Prohibited Locations.**

A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual personal wireless service facilities in the City, the following list establishes the order of preference of facilities, from the most preferred (1) to least preferred (4):

1. Collocation of a new personal wireless service facility at an existing facility.
2. Class 1.
3. Class 2 and Class 3.

4. Class 4.

B. Prohibited Locations. Personal wireless service facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development including equivalent designations within a planned community district or specific plan district except if located on common area lots developed with community facilities, landscape lots, or private streets.
2. On properties zoned for multi-unit residential development or mixed-use development including equivalent planned community district or specific plan districts with a maximum of four (4) allowable dwelling units.
3. In the Open Space (OS) Coastal Zoning District, unless personal wireless service facilities are collocated on an existing utility tower within a utility easement area, or collocated on another existing personal wireless service facility.
4. Within any environmentally sensitive habitat areas, wetlands, or bluffs.
5. Any beach or between the sea and first public road paralleling the sea, unless the personal wireless service facility is collocated on an existing utility tower within a utility easement area, or collocated on an existing facility; or other existing building.

**21.49.050 Design Standards.**

A. Generally Applicable Design Standards. Any personal wireless service facility shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the facility as visually inconspicuous as practicable. To the greatest extent feasible, personal wireless service facilities shall be designed to minimize the visual impact of the facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

B. In addition to the other design standards of this section, the following criteria shall be considered by the review authority in connection with its processing of any coastal development permit for a personal wireless service facility:

1. Blending. The extent to which the proposed personal wireless service facility blends into the surrounding environment or is architecturally compatible and

integrated into the structure.

2. Screening. The extent to which the proposed personal wireless service facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.

3. Size. The total size of the proposed personal wireless service facility, particularly in relation to surrounding and supporting structures.

4. Location. The proposed personal wireless service facility shall be located so as to utilize existing natural or manmade features in the vicinity of the facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop. Any personal wireless service facility shall be sited outside any environmentally sensitive habitat area, wetland, or bluff and sited such that they have no adverse impact on public access and recreation.

5. Collocation. In evaluating whether the collocation of a personal wireless service facility is feasible, the criteria listed in subsections (A)(1)-(4) of this section shall be used to evaluate the visual effect of the combined number of facilities at the proposed location.

C. Public View Protection. The personal wireless service facility, whether approved by administrative or discretionary review, complies with Section 21.30.100. The Personal wireless service facility shall be located outside any public viewshed to or along the ocean, bay, beach or coastal bluffs. Additionally, any potential impact from a new or modified personal wireless service facility to public views that are not identified by the Coastal Land Use Plan shall be evaluated to determine if inclusion in the Coastal Land Use Plan would be appropriate. If deemed appropriate for inclusion, the potential impacts to such public views shall be considered.

D. Height.

1. The review authority may approve or conditionally approve a coastal development permit for a personal wireless service facility that exceeds the maximum allowable height limit for flat structures pursuant to Section 21.30.060(C)(2) by not more than fifteen (15) feet only after making the following required findings:

a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed personal wireless service facility and existing adjacent developments or public spaces; and

- b. Establishment of the personal wireless service facility at the requested height is necessary to provide service.
2. All personal wireless service facilities shall comply with height restrictions or conditions, if any, required by the Federal Aviation Administration.
3. Any personal wireless service facilities installed on a streetlight, utility pole, utility tower or other similar structure within the public right-of-way shall not exceed thirty-five (35) feet in height above the finished grade.
4. A personal wireless service facility may be installed on existing utility poles or utility towers that exceed thirty-five (35) feet above the finished grade where the purpose of the existing utility pole or utility tower is to carry electricity or provide other wireless data transmission; provided, that the top of the proposed antennas do not extend above the top of the utility pole or utility tower.
5. A personal wireless service facility disguised as a flagpole may be installed provided it meets applicable height limits for flagpoles provided in Section 21.30.060.

E. Setbacks. The personal wireless service facility complies with all required setbacks for the coastal zoning district in which the facility is proposed. Setbacks shall be measured from the part of the facility closest to the applicable lot line or structure.

F. Design Techniques. The personal wireless service facility shall be designed in harmony and scale with the surrounding area, screened from public view, and blended so that the facility does not visually dominate the surrounding area. Design techniques may include the following:

1. Screening elements to disguise or otherwise hide the personal wireless service facility from view from surrounding uses.
2. Painting and/or coloring the personal wireless service facility to blend into the predominant visual backdrop.
3. Siting the personal wireless service facility to utilize existing features (such as buildings, topography, vegetation, etc.) to screen or hide the facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the personal wireless service facility.
5. Proportional sizing of the personal wireless service facility so that, as determined by the City, the screening of the facility would not create greater visual

impacts than the facility itself.

6. To the greatest extent practicable, new Class 4 facilities shall be designed and sited to facilitate collocation of an additional facility.

G. Screening Standards. For collocation and Section 6409(a) installations, the screening method shall be materially similar to those used on the existing personal wireless service facility and shall not diminish the existing screening of the facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the antennas and support equipment from public view. The following is a non-exhaustive list of potential design and screening techniques that must be considered for all facility installations:

1. Class 1 (Stealth/Screened) Installations.

a. All personal wireless service facility components, including all antennas, antenna panels, cables, wires, conduits, mounting brackets, and support equipment, shall be fully screened, and mounted either inside the building or structure, or behind screening elements and not on the exterior face of the building or structure.

b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. The review authority may require additional screening to avoid adverse impacts to views from land or buildings at higher elevations.

c. When a personal wireless service facility is proposed within an existing or new architectural feature such as a steeple, religious symbol, tower, cupola, clock tower, sign tower, etc., the facility shall be architecturally compatible with the existing structure or building.

2. Class 2 (Visible) Installations.

a. Building or structure mounted antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the antennas are mounted. No cables, wires, conduits, mounting brackets or any other associated support equipment shall be visible.

b. All antenna components and support equipment shall be treated with exterior coatings of a color and texture to match the predominant visual

background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and nonreflective materials that blend with surrounding materials and colors shall be used.

3. Class 3 (Public Right-of-Way) Installations.

a. New antennas proposed to be installed in the public right-of-way shall be placed on existing utility structures, streetlights, or other existing vertical structures when feasible. Antenna installations on existing or replacement streetlight poles or utility poles shall be screened by means of canisters, radomes, shrouds or other screening measures whenever feasible, and treated with exterior coatings of a color and texture to match the existing pole.

b. New or replacement vertical structures may be allowed when authorized by this Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed, provided they match existing or planned poles within the area.

c. If antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the pole.

4. Class 4 (Freestanding Structure) Installations.

a. The installation of new lattice towers or monopoles with visible antennas or antenna arrays is strongly discouraged due to the visual effects of such facilities. Preferred monopole designs include fully screened antennas without visible brackets, cables, or conduits. Additionally, any lattice tower or monopole should be sited in the least obtrusive location as practicable.

b. The construction of new freestanding structures such as signs, monoliths, pyramids, lighthouses, or other similar vertical structures shall be designed and sited to appropriately complement a site and screen all elements of the personal wireless service facility.

c. The installation of artificial rocks shall match in scale and color with other rock outcroppings in the general vicinity of the proposed site. An artificial rock screen may not be considered appropriate in areas that do not

have natural rock outcroppings.

d. The installation of artificial trees or shrubbery is strongly discouraged if they are obviously not natural to the average reasonable observer. When an artificial tree or shrubbery is proposed, it shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. All antennas and antenna supports shall be contained within the canopy of the tree design or other vegetation comparable to that being replicated by the proposed screening elements. Finally, new comparable living vegetation may be conditioned to enhance the artificial tree or shrubbery screening elements.

e. Flagpoles shall not exceed twenty-four (24) inches in width at the base of the flagpole and also shall not exceed twenty (20) inches in width at the top of the flagpole.

5. Class 5 (Temporary) Installations. A temporary personal wireless service facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the application review and permitting process in consideration of the temporary nature of the facility.

6. Support Equipment. All support equipment associated with the operation of any personal wireless service facility shall be placed or mounted in the least visually obtrusive location practicable, shall be screened from view, and placed underground, where feasible.

a. Installations on Private Property. The following is a nonexclusive list of potential screening techniques for personal wireless service facilities proposed on private property:

i. Building-Mounted Personal Wireless Service Facilities. For building- or structure-mounted antenna installations, support equipment for the facility may be located inside the building, in an underground vault, or on the roof of the building that the facility is located on; provided, that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening.

- ii. Roof-Mounted Personal Wireless Service Facilities. All screening materials for roof-mounted facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which they are mounted. The review authority may condition additional screening to avoid adverse impacts to views from land or buildings at higher elevations.
  - iii. Freestanding Personal Wireless Service Facilities. For freestanding facilities installations, not mounted on a building or structure, support equipment for the facility may be visually screened by locating the support equipment in a fully enclosed building, underground vault, or security enclosure consisting of walls and/or landscaping.
  - iv. Landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surrounding area.
  - v. Screen Enclosures. Screening enclosures shall be made of non-reflective material and painted to blend with surrounding materials and colors. Additionally, screening enclosures shall utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design with no more than one-inch gaps or an alternate enclosure design approved by the review authority.
  - vi. Undergrounding and Venting. If placed in an underground vault, flush-to-grade vents, or alternatively, vents may extend no more than twenty-four (24) inches above the finished grade and shall be screened from public view.
- b. Installations in a Public Right-of-Way. The following is a non-exhaustive list of screening techniques for personal wireless service facilities located in a public right-of-way:
- i. Where existing utilities services (e.g., telephone, power, cable TV) are located underground, the support equipment shall be placed underground if required by other provisions of this Code. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than twenty-four (24) inches above the finished grade and are screened from public view, may be incorporated. Electrical meters required for the purpose of providing power for the proposed personal wireless service facility may be installed above ground on a pedestal in a public right-of-way provided

they meet applicable standards of Title 13 unless otherwise precluded by this Code.

- ii. Support equipment proposed above ground in the public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
- iii. All transmission or amplification equipment such as remote radio units, tower-mounted amplifiers, and surge suppressors shall be mounted inside the utility or streetlight pole without materially increasing the pole diameter or shall be installed in the vault enclosure supporting the facility.

H. Night Lighting. The personal wireless service facility shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the United States Flag Code (4 U.S.C. Section 1 et seq.). Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties or upon any ocean, beach, bay, environmentally sensitive habitat area or wetland. The review authority shall consult with the Police Department regarding proposed security lighting for facilities on a case-by-case basis.

I. Signs and Advertising. The personal wireless service facility shall include discrete signage that continuously and accurately identifies the equipment, the permittee's site name or identification number, as well as a local or toll-free number to the permittee's network operations center. The personal wireless service facility shall not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended by the FCC, CPUC, or other United States or state governmental agencies.

J. Nonconformities. A proposed or modified personal wireless service facility shall not create any new or increased nonconformity as defined in this Implementation Plan, such as, but not limited to, a reduction in and/or elimination of required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.

K. Maintenance. The permittee shall be responsible for maintenance of the personal wireless service facility in a manner consistent with the original approval of the facility, including but not limited to the following:

- 1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition of approval.

2. All graffiti on any components of the personal wireless service facility shall be removed promptly in accordance with this Code.
  3. All landscaping required for the personal wireless service facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead, dying, or damaged.
  4. All personal wireless service facilities shall be kept clean and free of litter.
  5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the permittee.
  6. If a flagpole is used for a personal wireless service facility, flags shall be flown and shall be properly maintained at all times.
- L. Prior Coastal Development Permit. Any proposed personal wireless service facility shall comply with the terms and conditions of any previously authorized coastal development permit that remains in effect.