# CITY COUNCIL MEETING
# TUESDAY, JANUARY 8, 2019

# DOCUMENTS RECEIVED
# AFTER PUBLISHED AGENDA

# PUBLIC COMMENT

# JERRY TURNEY

"IF YOU DON'T HAVE A BASELINE OF FACTS, YOU HAVE NOTHING." John Kerry Sec. of State

# NEWSLETTER

WITHOUT LIGHT AIRCRAFT THERE WILL BE NO COMMERCIAL OPERATIONS

## HAYWARD HANGAR GROUP (HHG)

hwd206hangargroup@gmail.com

**HHG SUPPORT OF STAFF for**

1. Sept Open House
2. Tenant Appreciation Event
3. Tuskegee Airmen Dr signage
4. Velo II land lease
5. Briggs land lease
6. Ramesta hotel land lease
7. Mahabal hotel land lease
8. Airport Plaza land lease
9. New Office cancellation
10. 8 Staff-Constituent Meetings

**HAYWARD'S FINANCIAL POLICY**

"When the City…releases information relating to its finances…the City is obligated to ensure…information [is]… true, and accurate in all… respects."

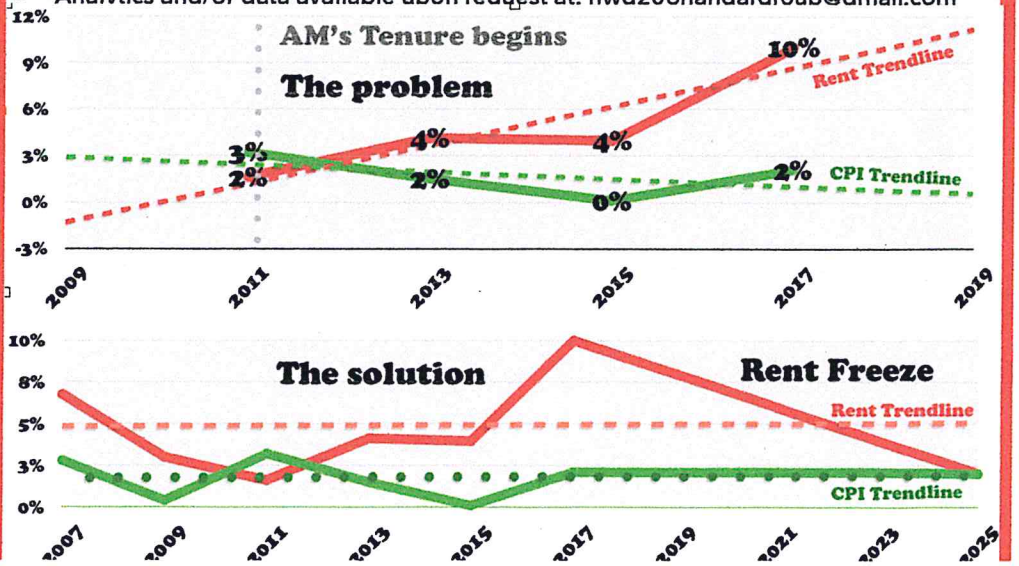
Jerry Turney, Hayward taxpayer
Kate Turney, Hayward taxpayer
August Ochabauer, Hayward taxpayer
Shawn Azimi, Hayward taxpayer
Ben Henderson, Hayward taxpayer
Bob Burnett, Hayward taxpayer
David Gregersen, Hayward taxpayer
Fred Ludwig, Hayward taxpayer
Jeff Gutow, Hayward taxpayer
Jim Knuppe, Hayward taxpayer
John Buckham, Hayward taxpayer
Doug Poulton, Hayward taxpayer
Gordon Platt, Hayward taxpayer
Gordon H. Hardy, Hayward taxpayer
Jeffery Carr & Associates
Joe Wlad, Hayward taxpayer
John Powell, Hayward taxpayer
Karla Werninghaus MD, taxpayer
Lloyd Emberland, Hayward taxpayer
Lynne Allen, Hayward taxpayer
Mark Albury, Hayward taxpayer
Nader Poursartip, Hayward taxpayer
Otto Hooks, Hayward taxpayer
Paul Green, Hayward taxpayer
Steve Allen, Hayward taxpayer
Steve Imberger, Hayward taxpayer
Wayne Cook, Hayward taxpayer
Wayne Phillips, Hayward taxpayer

**The Hayward City Council**, L-R
CM Elisa Marquez, CM Francisco Zermeno-CAC Chairman, Mayor Barbara Halliday, CM Al Mendall, CM Aisha Wahab-CAC, CM Mark Salinas-CAC, CM Sara Lamnin

- The City Council authorizes airport policies about fees, modernization, capital improvements, and maintenance, therefore
- We ask the City Council to freeze hangar rents until the trend-line (graphic below) realigns with the MFS's adjusted CPI, and
- We request a Council Resolution terminating consultations with the Aviation Management Consultant Group (AMCG) or its affiliates, because
- Staff contracted a $10k AMCG pseudo report staff did not read, and
- AMCG schemed to fabricate false data* which is the foundation for the 10% rent increase, which
- yields $110,000 of *ill gotten gains** as airport revenue, forevermore.

- Freezing rent hikes and blocking future AMCG consulting will protect Hayward's light aircraft facilities and operations now and in the future.

- *Analytics and/or data available upon request at: hwd206hangargroup@gmail.com



# PUBLIC COMMENT

# KATE TURNEY

**Public Comments** **January 8, 2019**

**by Kate Turney**

How does one resolve differences with managers who commission reports for tens of thousands of dollars and then refuse to read them - or refuse to share the reports to be read by anyone else, even those who are paying for the reports?

HHG faces managers who do just that. A $10,000 AMCG report in 2017 which they admitted in public meetings they hadn't read even 2 years after receiving the report - but used it as a basis for their claim that hangar rents were 51% behind other airports. Or a $75,000 report commissioned from Kimley-Horn in 2018 which they refuse to share with renters at all.

The same managers refuse to follow the procedures for rent increases defined in the Airport Master Plan, which they advertise on the Airport webpage to attract new renters. The managers say, "We can do whatever we want."

One manager attended the meeting in which HHG members voted 89% to 11% to oppose management's plan for a 6.5% 10 year rent raise which would cumulatively have totaled a whopping 79% rent increase - and then denied the vote had ever been taken.

We have met nine times. Each time, managers refuse to publish an agenda or publish notes afterward. Each time, they bring up the same disproven AMCG report to justify a minimum 10% annual increase for 5 years. They touted the 79% "compromise" as proof of their concern for hangar renters as their "valued customers."

HHG is willing to meet with managers at any time in any place, but we insist on beginning with FACTS. Managers have for two years ignored facts and invented their own reality.

We object.

We ask for a hangar rent freeze until the rent returns to a track parallel with Bay Area CPI, as proscribed in the Airport Master plan.

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# PUBLIC COMMENT

# CHARLIE PETERS

**Audi, Mobileye, Waymo, other top automakers unite to spread the self-driving gospel**

***By Kirsten Korosec / Techcrunch / January 7, 2019***

The self-driving vehicle evangelists are uniting.

A number of major automakers, technology companies and organizations with a stake in autonomous vehicles, including Audi, Aurora, Cruise, GM, Mobileye, Nvidia, Toyota, Waymo and Zoox has formed a coalition to spread the word about advanced vehicle technologies and self-driving vehicles. Their message: this tech can transform transportation and make it safer and more sustainable.

The Partners for Automated Vehicle Education, or PAVE, coalition was announced Monday at CES 2019 in Las Vegas. The aim of PAVE is educate the public and policymakers about the potential of automated vehicles.

"It is essential to engage the public and their elected representatives to shape an informed future of our roadways," Deborah A.P. Hersman, president and CEO of the National Safety Council said Monday.

Hersman, along with Audi of America, will serve as inaugural co-chairs of PAVE. A few automakers and tech companies including Ford, Fiat Chrysler and Aptiv weren't included in the launch of the coalition. It's probable that many more will join if the coalition gains momentum.

There's also no shortage of other industry-led coalitions, organizations and lobby groups focused on autonomous vehicle technology such as the Automated Vehicle Coalition

and the Self-Driving Coalition for Safer Streets, which includes Ford, Waymo, Lyft, Uber and Volvo.

PAVE says it will hold events across the country to introduce driver assistance and self-driving technology to consumers and policymakers, hold educational workshops aimed at federal, state and local officials, and develop educational materials to distribute to retail sales and customer service personnel.

The group wants to educate the everyday consumer as well. So, it plans to sponsor hands-on workshops in partnership with SAE International to give people the chance to see, touch and feel developing AV technology.

It will also hold policy workshops in partnership with academic institutions such as Stanford University's Center for Automotive Research to help policymakers understand AVs and their potential.

"Traditional automakers and newcomers are investing billions of dollars in the technology that will make automated vehicles possible," said Mark Del Rosso, President, Audi of America. "PAVE recognizes the need to invest in public information — in making sure consumers and policymakers understand what's real, what's possible, and what is rumor or speculation."

https://techcrunch.com/2019/01/07/audi-mobileye-waymo-other-top-automakers-unite-to-spread-the-self-driving-gospel/

# *GOOGLE: 510-537-1796 ARB*

***Corn Fuel Waiver for $2 GASOLINE***

***CAPP contact: Charlie Peters (510) 537-1796 cappcharlie@earthlink.net***

# PG&E stock, bonds plunge anew as S&P cuts its credit rating to junk

***By Molly Smith, Natalya Doris / L A Times / January 8, 2019***

PG&E Corp. shares continued plunging and bonds dropped to all-time lows Tuesday after S&P Global Ratings slashed the utility company's credit grades to the middle of the junk spectrum from investment grade, citing its limited options for managing wildfire liabilities.

The company's shares finished the day down $1.39, or 7%, to $17.56, as investors worried about the potential for the company to file for bankruptcy. On Monday, shares fell 22%. California investigators are looking into whether Pacific Gas & Electric Co. equipment ignited the deadliest blaze in state history in 2018 as well as fires in 2017, investigations that could leave the company with legal liabilities topping $30 billion.

S&P cut the company's rating five levels to B, the fifth-highest junk rating, from BBB-, the lowest investment-grade level, according to a statement late Monday. More cuts may come, it said. Fitch Ratings and Moody's Investors Service still rate the company at investment grade.

A spokesman for PG&E said in an email Tuesday the company's board was "actively assessing" operations, finances, management, structure and governance while maintaining a commitment to improving safety.

PG&E's record-low bond prices underscore how much more the company will have to pay to borrow in the future — even if California comes up with a legislative bailout. It also highlights how vulnerable even highly regulated, traditionally dependable stocks such as utilities can be to wildfires, hurricanes and other natural disasters.

"This will ultimately increase costs to California ratepayers and taxpayers, which already face a high cost of living," Gabriel Petek, an S&P analyst who rates the state of California, not PG&E, said in an email Monday. "The important takeaway to me is that these fires and how the 'fire season' is virtually a year-round phenomenon now represent a material consequence of climate change."

PG&E's notes due next year with a coupon of 3.5% are yielding more than 9.9%, a level far above what most high-yield securities are paying. Debt rated B, for example, the mid-tier of junk bonds, yields on average 7.5% as of Monday's close, according to Bloomberg Barclays index data.

Moody's and Fitch have the company under review for further cuts. The firms started cutting in November as PG&E faced potential liabilities from 2017's wildfires that could top $17 billion, according to a JPMorgan Chase & Co. estimate. The company had about $430 million of cash on its books at the end of September.

If Moody's follows with a cut to high-yield as well, PG&E may face a cash collateral requirement of at least $800 million to guarantee power contracts, according to a regulatory filing. No other ratings triggers have been disclosed.

PG&E has suspended its dividend and fully drawn its lines of credit. It is considering filing for bankruptcy as soon as February, people familiar with the situation said Friday. State lawmakers and regulators are looking at options including allowing the company to issue bonds to pay its liabilities or breaking up the utility.

If PG&E is ultimately held responsible for the Camp fire, it could be on the hook for billions of dollars of potential liabilities. Because the company has filed for bankruptcy before, it and lawmakers would probably try to avoid a repeat, said Ryan Brist, head of global investment-grade credit and portfolio manager at Western Asset Management.

"That was a disastrous time for all participants involved," Pasadena-based Brist said. "It would be my guess that the same parties would want to pursue a much less volatile solution this go-round when faced with the tough problems of statewide wildfires."

But PG&E, with about $18.6 billion of long-term debt as of the end of September, could possibly see good reason to file for bankruptcy, CreditSights analyst Andy DeVries said in a report Monday. Such a filing would give the company bargaining power with insurance companies as it tries to settle customer claims at a discount, he said.

Fitch analyst Philip Smyth said a determination by California regulators that PG&E's equipment was involved in the Tubbs fire in 2017 or last year's Camp fire would be the strongest impetus to cut the rating.

"Right now, there is no investigation that says with any clarity … that their equipment was the catalyst," Smyth said in an interview Monday. "Since we downgraded in November, I don't think things have gotten meaningfully worse."

https://www.latimes.com/business/la-fi-pge-credit-rating-cut-20190108-story.html

***GOOGLE: 510-537-1796 ARB***

***CCA=Shell?***

***CAPP contact: Charlie Peters (510) 537-1796 cappcharlie@earthlink.net***

# PUBLIC COMMENT

# GHOBAD ZAREH SADEGHI

**To: Hayward City Council Members meeting 01/08/2019 7pm**

**From: Ghobad Zareh Sadeghi/www.rugonsale.com**

Thanks For listening My not good English. 1st of all, I appreciate Legal department and deputy City Clerk of Hayward City because of true and correct letter of March 13, 2015

The Law allows me as a Citizen, stand before Hayward City Council Members and Explain what I am in believe?

We vote Elected members to bring New Idea and Fresh Respiration to all aspects of our lives including Justice. I believe the Elected members become unreachable for voters, * eliminating this provision, at least in Breach of contract case Number HG14715180-02/25/2014, by Discriminatory intention and action of legal professionals with help of some court officials against in Pro Per litigant, wasting the time and money of plaintiff, Judiciary Branch, Justice Department and ultimately Community that we are living & doing business in it.

These happening by registry clerks and deputy clerks in courts and Appeal courts, by Secretary to staff counsel of Commission on Judicial Performance, by deputy Trial counsel of State Bar, by public inquiry unit of Attorney General, followed by District Attorney Assistants (Mr. Michael Carter, Mr. Micheal O'Connor and Mr. Matthew Beltramo) and lasted by Constituent liaison & organizer office of Supervisor 4th district (Mr. Matt Turner), ,

I am duly aware of City councils duties, that has no jurisdiction on courts. In the same time I believe that my voice should be heard, not only by voting but by reaching representatives and explaining wrongs and unlawful actions that happening, as I have commented in Judiciary Council meetings and as I explained Here. I declare all above are true and correct.

**Sincerely; Ghobad Zareh Sadeghi (510) 938-6612**

ata@rugonsale.com 010819 **Tuesday January 08, 2019**

CITY OF
HAYWARD
HEART OF THE BAY

March 13, 2015

Mr. Ghobad Zareh Sadeghi
2254 East Avenue
Hayward, CA 94541

**Re: 1095 B Street**

Dear Mr. Sadeghi:

This is in response to your letter dated March 3, 2015, regarding 1095 B Street, Hayward. Your letter was forwarded to our office by the City Attorney's office.

City staff has conducted diligent search and determined that the address, 1095 B Street, Hayward does not exist.

Thank you,

Yolanda Cruz
Deputy City Clerk

Exhibit 8

Office of the City Clerk
777 B Street • Hayward • CA • 94541-5007
Tel: 510/583-4400 • Fax: 510/583-3636 • TDD: 510/247-3340
EMAIL: CityClerk@hayward-ca.gov

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ROOM G4
APPEALS SECTION

STREET
CA 94612

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIRST APPELLATE DISTRICT

VOL. 1

APIC THE GLOBE, LLC VS. SADAGHI

CLERK'S TRANSCRIPT ON APPEAL

From Judgment of the Superior Court of the State of California in and for the County of Alameda

Judge: TARA M. DESAUTELS

No: 716432 Appeal Filed: 07-01-14

Appearances:

APPELLANT: GOHBAD SADAGHI
IN PRO PER
1095 B STREET.
PNB 101 HAYWARD CA 94541

RESPONDENT: ROTHBARD, TODD
LAW OFFICES OF TODD ROTHBARD
100 SARATOGA AVE., STE. 200
SANTA CLARA, CA 95051

# AGENDA QUESTIONS
# & ANSWERS

## Items 2 and 4

**From:** Miriam Lens
**Sent:** Tuesday, January 8, 2019 3:06 PM
**To:** Aisha Wahab; Al Mendall; Barbara Halliday; Elisa Marquez; Francisco Zermeno; Mark Salinas; Sara Lamnin
**Cc:** Roxanne Epstein; Colleen Kamai; Rosalinda Romero; Kristoffer Bondoc; Denise Chan; Michael Wolny; Amber Billoups; Adam Kostrzak; Alex Ameri; Chuck Finnie; Dustin Claussen; Garrett Contreras; Jane Light; Jennifer Ott; Kelly McAdoo; Laura Simpson; Maria Hurtado; Mark Koller; Michael Lawson; Miriam Lens; Nina Morris Collins; Todd Rullman
**Subject:** City Council Meeting 1/8/19 - Agenda Questions and Answers for Items 2 and 4
**Attachments:** 2019-01-08 MCC QA.pdf

Good afternoon Mayor and Council Members,

Please find attached a copy of the Agenda Questions and Answers for Item 2 (CONS 19-001 Measure C Funds) and Item 4 (LB 19-001 Dig-Once Policy) on tonight's Council agenda.

Hard copies of the Agenda Questions and Answers will be distributed prior to the Closed Session meeting. The item will be added to the City's website as well.

Regards,

Miriam Lens
City Clerk
City of Hayward | 777 B Street | Hayward, CA 94541
☎ Phone: 510.583.4401 | Fax: 510-583-3636 | * Email: miriam.lens@hayward-ca.gov

HAYWARD

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**From:** Colleen Kamai <Colleen.Kamai@hayward-ca.gov>
**Sent:** Tuesday, January 8, 2019 2:28 PM
**To:** Miriam Lens <Miriam.Lens@hayward-ca.gov>
**Cc:** Roxanne Epstein <Roxanne.Epstein@hayward-ca.gov>
**Subject:** MCC Q & A 2019-01-08

Hi Miriam,

The City Manager has approved the attached MCC Q&A's for distribution for tonight's meeting.

Thank you,
Colleen

Colleen Kamai | Executive Assistant
City of Hayward | Office of the Mayor & City Council
777 B St., 4th Floor | Hayward, Ca 94541
ph. 510-583-4340 | fax 510-583-3601

colleen.kamai@hayward-ca.gov

| AGENDA QUESTIONS & ANSWERS<br>MEETING DATE: January 8, 2019 | |
|---|---|
| Item #2: Approval of a Revised Application for the Proposed Establishment of a Cocktail Bar and Lounge with Food Service and Cabaret Entertainment Located at 990 "B" Street, Assessor Parcel No. 428-0056-057-00. VGJB, Inc. (Applicant); Corinne and Timoleon Zaracotas (Property Owners), Requiring Approval of Conditional Use Permit Application No. 201802339 (Report from Development Services Director Simpson) | |
| Are the restrictions on "cabaret operations" from the City only, or are there also limitations by ABC? Specifically, the limitations on days of the week and time of day (starting at 9pm)? | Cabaret regulations for establishments within Hayward are governed by the City's Cabaret and Dances Ordinance – Section 6-2.10 of the Hayward Municipal Code. The California Department of Alcoholic Beverage Control (ABC) investigates applications for licenses to sell alcoholic beverages, reports on the moral character and fitness of applicants, and reviews the suitability of premises where sales are to be conducted – focusing on the alcohol component of the establishment by enforcing State law (i.e. Business and Professions Code, Penal Code, and Vehicle Code).<br><br>For the most part, cabaret regulations are regulated and enforced at the local level. As indicated above, the City currently has a Cabaret and Dances Ordinance which requires each establishment providing cabaret entertainment to obtain a cabaret license issued by the Police Department, unless otherwise exempted by the Code.<br><br>With respect to the hours of operation for cabaret, the Ordinance currently simply states that "no dancing shall be permitted between the hours of 2:00 a.m. and 10:00 a.m." but does not include a start time. The commencement of cabaret entertainment at 9 p.m. was proposed by the applicant and evaluated by both the Police Department and Planning Division. |
| Item #4: Introduction of an Ordinance of the City of Hayward, Amending Chapter 7 of the Hayward Municipal Code by Amending Sections 7-2.00, 7-2.10 and 7-2.15 and Adding Sections 7-2.46 and 7-2.47 to Establish a "Dig-Once" Policy of Installing Underground Conduits and Adoption of a Resolution Amending the Master Fee Schedule for Related Program Fees (Report from Deputy City Manager Ott) | |
| Have local providers who are likely to be participating agencies (ex: Comcast, PG&E, AT&T, etc) been notified of this proposed ordinance and policy? | The ordinance was publicly noticed for two weeks prior to tomorrow's Council meeting. Additionally, staff has been in communication with AT&T, Verizon, Comcast and Tekify throughout the drafting of the ordinance. Staff met with AT&T on December 13 and is scheduling time to meet with Verizon (MCImetro) and Crown Castle. Staff did not proactively notify PGE but will do so for the initial Dig-Once Coordination meeting that will take place following adoption of the Dig-Once Ordinance. |

# ITEM #3  PH 19-001

# APPROVAL OF A REVISED APPLICATION FOR THE PROPOSED ESTABLISHMENT OF A COCKTAIL BAR AND LOUNGE WITH FOOD SERVICE AND CABARET ENTERTAINMENT LOCATED AT 990 “B” STREET, ASSESSOR PARCEL NO. 428-0056-057-00. VGJB, INC. (APPLICANT); CORINNE AND TIMOLEON ZARACOTAS (PROPERTY OWNERS), REQUIRING APPROVAL OF CONDITIONAL USE PERMIT APPLICATION NO. 201802339

# JAY BALTAZAR HANDOUT

990 LOUNGE

## BITES

### 990 APPETIZER TOWER
PINCHITOS
GARLIC PARMESAN FRIES
MAPLE CANDIED BACON

### MEDITERRANEAN CHARCUTERIE PLATE
FRESH SEASONAL FRUIT
SLICED CUCUMBER
SALAMI
PITA BREAD
HUMMUS
ASSORTED CHEESE

### FLAT BREAD PIZZA
MARGHERITA
CHICKEN PESTO

### GARLIC CHEESE PULL BREAD

### SLIDERS
CHICKEN PESTO
BOURBON BACON

### SNACKS
POPCORN, BAR MIX, KALE CHIPS, EDEMAME

## Menu

The food menu at 990 Lounge is completely unique and cannot be found anywhere else in the downtown Hayward area. We have curated a menu that is rich in protein and carbohydrates to pair with our beers and cocktails.

Table tent

990 LOUNGE

## COCKTAILS

**HAYWARD MULE -** HANGAR 1 VODKA, GINGER BEER, FRESH LIME JUICE

**OLD FASHION -** WHISKEY, BITTERS, ORANGE

**SAZERAC -** BRANDY, FRESH LEMON JUICE

**THE LAST WORD -** GIN, FRESH LIME JUICE, MARASCHINO LIQUEUR AND GREEN CHARTREUSE

**NEGRONI -** GIN, CAMPARI, VERMOUTH

**PEAR MOJITO -** RUM, FRESH LIME JUICE, PEAR PUREE, MINT LEAVES, CLUB SODA

**THE SIDECAR -** HENNESSY, COINTREAU, FRESH LIME JUICE

**MARGARITA -** TEQUILA, COINTREAU, FRESH LIME JUICE

**THE LOVE POTION -** PROSECO, FRESH BERRIES

**GIMLET -** GIN, FRESH LIME JUICE

## BEERS ON TAP

**21ST AMENDMENT HELL OR HIGH WATERMELON**

**ALAMEDA'S IPA**

**LAUGHING MONK 3RD ST. PALE ALE**

**GREAT WHITE ALE**

**ASSORTED CRAFT BOTTLED BEERS**

**KOMBUCHA BEER**

**HOUSE MADE SANGRIA'S**

**BLOODY MARY BAR**

**MIMOSA'S**

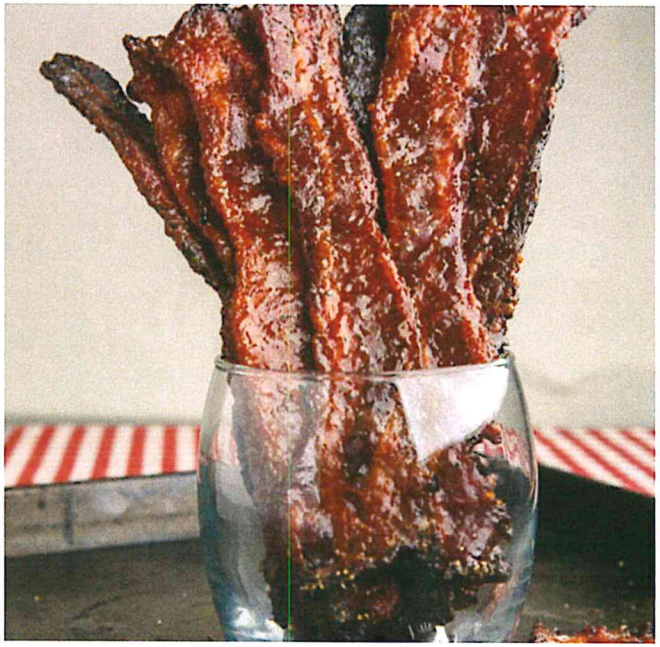
## FOUNTAIN DRINKS

**COKE, COKE ZERO, SPRITE**

## Appetizer Tower

Pinchitos

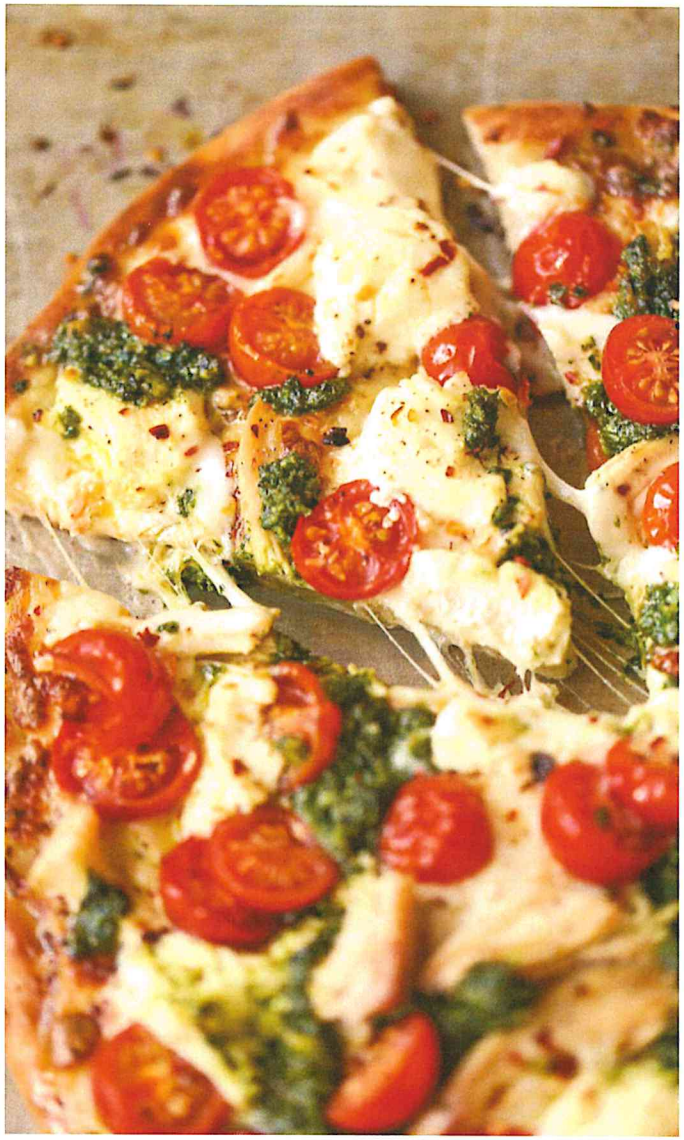
Garlic Parmesan Fries



Maple Candied Bacon

Meditteranean Charcuterie Plate

## Flat Bread Pizza



Chicken Pesto

Margherita

Garlic Cheese Pull Bread

Bourbon Bacon Sliders

Pesto Chicken Sliders

## Snacks

Bar Mix

Popcorn

Kale Chips

Edemame

# ITEM #4 LB 19-001

# INTRODUCTION OF AN ORDINANCE OF THE CITY OF HAYWARD, AMENDING CHAPTER 7 OF THE HAYWARD MUNICIPAL CODE BY AMENDING SECTIONS 7-2.00, 7-2.10 AND 7-2.15 AND ADDING SECTIONS 7-2.46 AND 7-2.47 TO ESTABLISH A "DIG-ONCE" POLICY OF INSTALLING UNDERGROUND CONDUITS AND ADOPTION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE FOR RELATED PROGRAM FEES

**From:** Miriam Lens
**Sent:** Tuesday, January 8, 2019 3:15 PM
**To:** Aisha Wahab; Al Mendall; Barbara Halliday; Elisa Marquez; Francisco Zermeno; Mark Salinas; Sara Lamnin
**Cc:** Roxanne Epstein; Colleen Kamai; Rosalinda Romero; Denise Chan; Kristoffer Bondoc; Michael Wolny; Amber Billoups; Jennifer Ott; John Stefanski; Joseph Brick; Fred Kelley; Adam Kostrzak; Alex Ameri; Chuck Finnie; Dustin Claussen; Garrett Contreras; Jane Light; Kelly McAdoo; Laura Simpson; Maria Hurtado; Mark Koller; Michael Lawson; Miriam Lens; Nina Morris Collins; Todd Rullman
**Subject:** City Council Meeting: 1/8/19 - Item 4 (Dig-Once Policy)
**Attachments:** Dig Once Memo.Policy Final 1.8.19.pdf

Good afternoon Mayor and Council Members,

Please find attached a memo regarding Item 4 (LB 19-001 "Dig-One" Policy) on tonight's Council agenda.

A hard copy will be distributed before the Closed Session and a digital copy will be added to the City's website.

Regards,

Miriam Lens
City Clerk
City of Hayward | 777 B Street | Hayward, CA 94541
☎ Phone: 510.583.4401 | Fax: 510-583-3636 | * Email: miriam.lens@hayward-ca.gov

HAYWARD

CITY OF HAYWARD
HEART OF THE BAY

**DATE:** January 7, 2019

**TO:** Mayor and City Council

**FROM:** City Manager

**THROUGH:** Deputy City Manager

**SUBJECT** Introduction of an Ordinance of the City of Hayward, Amending Chapter 7 of the Hayward Municipal Code by Amending Sections 7-2.00, 7-2.10 and 7-2.15 and Adding Sections 7-2.46 and 7-2.47 to Establish a "Dig-Once" Policy of Installing Underground Conduits and Adoption of a Resolution Amending the Master Fee Schedule for Related Program Fees (Report from Deputy City Manager Ott)

## RECOMMENDATION

That Council accepts the amendment to agenda item #4, LB 19-001, regarding Attachment III "Dig-Once" Policy. The updated Attachment III clarifies language regarding the minimum trench length requirements to read

> *"Unless waived by the Public Works Director because of undue burden, an unfavorable cost- benefit analysis, or the consideration of other relevant factors, the PROW Excavator/Permittee shall install two 3-inch diameter conduits for the following types of projects that have a trench length of* ***at least*** *300 feet, or less if determined by the Public Works Director:"*

*Recommended by*: John Stefanski, Management Analyst II

Approved by:

Kelly McAdoo, City Manager

HAYWARD

**DEPARTMENT OF PUBLIC WORKS**
ENGINEERING AND TRANSPORTATION DIVISION

# DIG ONCE POLICY

Pursuant to Sections 7-2.00, 7-2.10, 7-2.15, 7-2.46, 7-2.47
of the Hayward Municipal Code

## PURPOSE:

The purposes of implementing a Dig Once policy include:

- Protecting newly and recently paved roads and sidewalks;
- Ensuring efficient, non-duplicative placement of infrastructure in the Public Rights-of-Way (PROW);
- Minimizing the impact of construction on residential and commercial communities;
- Reducing the overall costs of all underground work in the PROW by capitalizing on significant economies of scale;
- Enhancing the uniformity of construction; and
- Leveraging construction for the deployment fiber within the City's Industrial Corridor and deployment of a public communications network.

## BACKGROUND:

Coordinating the underground installation and co-location of infrastructure within the PROW benefits communities, businesses, and the City. The excavation of roads and cutting of sidewalks substantially reduces the service life, quality, and performance of those surfaces. Furthermore, each underground installation reduces the space available for future infrastructure. While aerial installation methods requiring attachments to utility poles are usually less expensive than underground installation, aerial installations have significant drawbacks. Those drawbacks include negatively impacting the aesthetics within the PROW, limited space on existing utility poles in more crowded areas, dealing with a lack of ownership of overhead infrastructure, and reliability issues as a result of exposure to outside conditions. Underground installation using protective conduit generally provides scalable, flexible, and durable long-term infrastructure.

## POLICY DIRECTIVE:

1. Unless waived by the Public Works Director because of undue burden, an unfavorable cost- benefit analysis, or the consideration of other relevant factors, the PROW Excavator/Permittee shall install two 3-inch diameter conduits for the following types of projects that have a trench length of at least 300 feet, or less if determined by the Public Works Director:
    a. Excavations for the purpose of installing utilities, including but not limited to communications, electrical, gas, water, wastewater,

or storm drainage; and

b. Other excavations, or work on public property or in the public right-of-way that provide a similar opportunity to install conduit for future use.

2. Unless the Public Works Director determines otherwise, the typical standard installation requirements are listed below:
   a. 3-inch nominal diameter conduit.
   b. Made of high-density polyethylene (HDPE) with a standard dimension ratio (SDR) of 11.
   c. Conduit will be laid to a depth of not less than 18 inches below grade in concrete sidewalk areas, and not less than 24 inches below finished grade in all other areas when feasible, or the maximum feasible depth otherwise.
   d. When feasible and needed, install minimum 3-foot radius sweeps and bends.
   e. Composite anti-theft vaults having dimensions of 30" x 48" x 36" (W x L x D), placed in the sidewalk or available green space within the city or municipality ROW, as close to the curb or gutter as possible and spaced at 600-foot intervals or less typically at street intersections.
   f. Pull-rope shall be installed within each conduit or inner duct if required by the Public Works Director.
   g. When practicable, furnish with 10 AWG insulated tracer wire inside at least one pipe and an external "warning" ribbon tape a minimum of 3-inches above the conduit.
   h. All conduit couplers and fittings shall be installed to be watertight. Conduits shall be sealed with endcaps upon installation.
3. Conduits installed will be owned by the City.
4. A record of all City-owned conduits will be documented and transferred to the City for geographic information system (GIS) entry.
5. The PROW Excavator/Permittee should make a documented effort to work with other utility agencies to co-locate infrastructure in the same trench whenever feasible to minimize construction costs, minimize future public disruptions, and encourage efficient use of the PROW.
6. Each utility shall participate in periodic coordination meetings as requested by the City with other utilities and affected public agencies. The purpose of these meetings shall be to coordinate activity between public works projects and utility projects in the PROW.

Effective Date: January 15, 2019

*Rev. January 7, 2019*

# ITEM #4 LB 19-001

# INTRODUCTION OF AN ORDINANCE OF THE CITY OF HAYWARD, AMENDING CHAPTER 7 OF THE HAYWARD MUNICIPAL CODE BY AMENDING SECTIONS 7-2.00, 7-2.10 AND 7-2.15 AND ADDING SECTIONS 7-2.46 AND 7-2.47 TO ESTABLISH A "DIG-ONCE" POLICY OF INSTALLING UNDERGROUND CONDUITS AND ADOPTION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE FOR RELATED PROGRAM FEES

# E-MAIL FROM CROWN CASTLE

| | |
|---|---|
| **From:** | Miriam Lens |
| **Sent:** | Tuesday, January 8, 2019 3:51 PM |
| **To:** | Aisha Wahab; Al Mendall; Barbara Halliday; Elisa Marquez; Francisco Zermeno; Mark Salinas; Sara Lamnin |
| **Cc:** | Roxanne Epstein; Colleen Kamai; Rosalinda Romero; Joseph Brick; John Stefanski; Fred Kelley; Denise Chan; Michael Wolny; Amber Billoups; Adam Kostrzak; Alex Ameri; Chuck Finnie; Dustin Claussen; Garrett Contreras; Jane Light; Jennifer Ott; Kelly McAdoo; Laura Simpson; Maria Hurtado; Mark Koller; Michael Lawson; Miriam Lens; Nina Morris Collins; Todd Rullman |
| **Subject:** | FW: Crown Castle Comments Regarding Haywards Dig Once Policy and Wireless Ordinance Revision |
| **Attachments:** | Crown Castle Comments to Hayward City Dig Once Policy 1-8-19.pdf; Hayward Proposed Ordinance Comments LW 1.7.19.docx |

Mayor and Council Members,

Please see email below from Mr. Mark Hansen regarding Item No. 4 on tonight's Council agenda. Hard copies will be distributed prior to the Closed Session.

Thank you,

Miriam Lens, City Clerk

---

**From:** Hansen, Mark <>
**Sent:** Tuesday, January 8, 2019 3:33 PM
**To:** Miriam Lens <Miriam.Lens@hayward-ca.gov>
**Cc:** James, Sharon <>
**Subject:** Crown Castle Comments Regarding Haywards Dig Once Policy and Wireless Ordinance Revision

Hi Miriam,
Thank you for allowing Crown Castle to offer some comments regarding Hayward City's Draft Dig Once Policy and Wireless Ordinance Revision.

Attached to this email, please find two documents. The first is highlighting Crown's concerns regarding the dig once policy being considered this evening and the second is a redline format with legal comments to the draft wireless ordinance text amendment.

My Manager, Sharon James who is copied on this email will drop off 12 hard copies of both documents before 5:00pm today.

Thanks again and please feel free to contact me with any questions.

Best regards,

**MARK HANSEN**
Government Relations Project Manager, Northern California District
Small Cell & Fiber Solutions
T: (408) 468-5525 | M: (408) 569-5533 | F: (408) 468-5503

**CROWN CASTLE**
695 River Oaks Parkway, San Jose, CA 95134
CrownCastle.com

CROWN CASTLE

**Crown Castle**
695 River Oaks Parkway
San Jose, CA 95134

Jan 8, 2019

Dear Hayward City Council,
Crown Caste Fiber LLC "Crown Castle" is offering some comments relating to the "dig once" policy and requests that these comments become part of the written record.

In footnote 252 of the new order, the FCC briefly addresses in-kind type of requirements/payments. The footnote suggests the FCC views in-kind requirements the same way it views fees or aesthetic requirements: they must be reasonable and there must be a sufficient nexus between requirement and the actual economic or aesthetic impact of the deployment (fees must be objectively reasonable and based on the actual costs; aesthetic requirements must be technically feasible and reasonably directed to remedying intangible public harm of out-of-character-- they must incorporate clearly-defined and ascertainable standards, applied in a principled manner, and must be published in advance).

Using this reasonable/actual impact framework, the policy quickly becomes problematic. The cost of complying with the policy (on a project basis or more broadly, considering the effects this policy may have in a given region) can easily become unreasonable. While the policy allows the City to waive the requirement, such waiver is at the Public Works Director's discretion with no clearly-defined and ascertainable standards to guide such determination.

Allowing the Director unchecked discretion to determine whether the waiver applies necessarily means the requirement fails under the FCC order because "at the Director's discretion" is not a clearly defined and ascertainable standard published in advance. Further, the issuance of a waiver cannot be applied in a principled manner where such decision is at an individual's discretion.

Text of the relevant footnote below:

[252] Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality, such as installing a communications network dedicated to the municipality's exclusive use. *See, e.g.*, Comcast Comments at 9-10 Verizon Comments at 7, Crown Castle Comments at 55-56. Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a). *See also* BDAC Regulatory Barriers Report, Appendix E at 1 (describing "conditions imposed that are unrelated to the project for which they were seeking ROW access" as "inordinately burdensome"); BDAC Model Municipal Code at 19, § 2.5a.(v)(F) (providing that municipal zoning authority "may not require an Applicant to perform services . . . or in-kind contributions [unrelated] to the Communications Facility or Support Structure for which approval is sought").

Sincerely,

Mark Hansen
Government Relations Project Manager, Northern California

**ATTACHMENT II**

ORDINANCE NO. 19-_

INTRODUCTION OF AN ORDINANCE OF THE CITY OF HAYWARD AMENDING CHAPTER 7 OF THE HAYWARD MUNICIPAL CODE BY ADDING ARTICLE 4 TO ESTABLISH REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY

**Commented [WL1]:** The Ordinance's stated purpose is discriminatory in that it singles out wireless communication facilities. The standards and rules articulated under this ordinance are therefore necessarily discriminatory because they place an additional regulatory burden on providers using small wireless facilities that is not also imposed on other ROW occupants.

WHEREAS, The Hayward City Council adopted Ordinance No. 97-12 to establish development standards for wireless communication facilities outside of the Public Right-of-Way; and

WHEREAS, Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph 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 abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters; and

WHEREAS, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to 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; and

WHEREAS, Technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macro-cell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system deployments in the public rights-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that balances local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City's residents to the greatest extent practicable; and

WHEREAS, Wireless providers are in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public rights-of-way; and

WHEREAS, The City owns and maintains approximately 4,700 existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City's jurisdiction and has an interest in deriving appropriate value from the City's property; and

**Commented [WL2]:** Under the FCC's most recent ruling, local government fees for ROW access or access to government property are limited to cost recovery only. See FCC 18-133 at para. 50 et seq.

***WHEREAS, Wireless providers desire to install, maintain and operate wireless communications facilities on the City's poles in the public rights-of-way and these wireless providers are willing to compensate the City for the right to use the City's poles for wireless communications purposes; and***

WHEREAS, The City prepared a form Master License Agreement and associated Pole License form to be used by the City and certain wireless providers for the requested installation, maintenance, and operations of wireless communication facilities on City poles in the public rights-of-way; and

WHEREAS, Consistent with all applicable Laws, the City does not intend the Master License Agreement or any issued Pole License to grant any particular wireless provider the exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and the City may enter into similar or identical agreements with other entities, which include without limitation to any business competitors of a wireless provider who has entered into the Master License Agreement; and

WHEREAS, The City desires to authorize certain wireless providers access to individual City- owned poles based on a comprehensive set of criteria and a uniform Master License Agreement and associated Pole License form and pursuant to all the applicable permits issued by the City to protect public health and safety; and

WHEREAS, Said approval of a form Master License Agreement and associated Pole License form is not considered a "project" pursuant to the California Environmental Quality Act of 1970, as amended, and implementing state CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively "CEQA"), Section 15378 and Public Resources Code Section 21065 as the adoption of the form agreement and license is not the sort of activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the approval of the form Master License Agreement and associated Pole License form is exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines in that there is no potential that the agreement and license approval may have a significant effect on the environment. Moreover, any site-specific future projects approved based on the Master License Agreement and associated Pole License form would necessitate further environmental review on a case by case basis; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 4 as shown in the attached Exhibit "A", is hereby added to Chapter 7, Public Works, of the Hayward Municipal Code, in order to establish a policy governing Wireless Communications Facilities in the Public Right of Way.

SECTION 2. Severance. Should any part of this ordinance be declared by a final

decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

SECTION 3. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the __th day of January, 2019, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the___th day of_____, 2019, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

_____
Mayor of the City of Hayward

DATE:_____

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

**Exhibit A**

**CHAPTER 7- PUBLIC WORKS**

***ARTICLE 4- WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY***

**SECTION 7-4.00.** Title and Purpose

This Article 4 is known as and may be cited as the "Public Right of Way Wireless Communication Facilities Ordinance" of the City of Hayward. The purpose of this Ordinance is to ensure that residents and businesses in the City of Hayward have reliable access to wireless telecommunications networks and state of the art communications services and that installations, modifications, and maintenance of Wireless Communications Facilities (WCF) in the Public Right-of-Way (PROW) are completed in a manner consistent with all applicable laws, are safe, and avoid or mitigate visual, environmental and neighborhood impacts. This Ordinance regulates WCF installations in the PROW to the fullest extent allowed by law.

This ordinance is adopted:

(a) To provide uniform standards for the community desired design, placement, permitting, and monitoring of telecommunication facilities consistent with applicable state and federal requirements;
(b) To manage the public right of way as to the time, place, and manner in which it is accessed;
(c) To minimize the environmental and aesthetic impacts of installations in crowded public rights of way;
(d) To strongly encourage telecommunications facilities to be installed only as ancillary uses at new and existing sites;
(e) To require installation on arterial rather than local streets when feasible;
(f) To preserve view corridors, to discourage visual blight and clutter, and to encourage aesthetic placement of telecommunication facilities;
(g) To accommodate public and City use of the public right of way, so as to permit maintenance of telecommunication facilities, and to minimize disruption to vehicular traffic and pedestrian flow; and on-street parking;
(h) To minimize unnecessary disruption of the public right of way by coordinating installations so as to effectively manage use of the public right of way;
(i) To ensure the structural integrity, reliability, performance, safety, quality, ease of maintenance, and aesthetic integrity of the public right of way;
(j) To ensure that similarly situated public right of way users are treated in a competitively neutral and non-discriminatory manner while complying with applicable state and federal requirements;
(k) To ensure compliance with all federal, state, county, and local laws;
(l) To prevent hazardous conditions along the public right of way; and
(m) To manage the long-term use of the public right of way.

**Commented [WL3]:** Singling out wireless use alone in terms of applicability of standards and other rules is in conflict with federal rules. See first comment above.

This Ordinance establishes standards for the siting, design, permitting, construction, operation, inspection, maintenance, repair, modification, removal and replacement of communications facilities in the public right of way in recognition of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, § 6409(a) (2012) (Spectrum Act), *codified at* 47 U.S.C. § 1455(a), and FCC regulations promulgated thereunder by the Federal Communications Commission (FCC), including the FCC's Report and Order of October 21, 2014, FCC 14-153 (rel. Oct. 21, 2014).

**Commented [WL4]:** See above comment. The articulated standards are discriminatory in contravention of applicable law.

The siting and construction of antennas and facilities used in providing telecommunications services on all property other than the PROW, are subject to the provisions in Chapter 10, Article 13, of the Hayward Municipal Code.

**SECTION 7-4.10. Definitions**

"Accessory Equipment" means any equipment serving or being used in conjunction with a WCF. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

"Administrative Approval" means approval granted by designated staff members authorized to grant approval after Administrative Review.

"Administrative Review" means evaluation of an application by designated staff.

"Antenna" means a device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include but are not limited to directional antennas; such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

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

built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. §§ 1.40001(b)(1)(i)-(ii).

"Camouflage" means the means and methods by which a WCF is designed to conceal the equipment and blend the installation with the surrounding environment. This is accomplished by requiring the use of one or more Concealment Elements. The City of Hayward will not allow installation of monopalms or other artificial trees or plants in the PROW.

"Carrier on Wheels or Cell on Wheels ("COW")" means a portable self-contained WCF that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

"Collocation" means ~~the act of siting multiple WCFs on an existing structure~~ mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure whether or not there is an existing antenna on the structure.

"Concealment Elements" means:

(1) Radio Frequency transparent screening;

(2) Approved, specific colors;

(3) Minimizing the size of the Site;

(4) Integrating the installation into existing utility infrastructure;

(5) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed Site. The new infrastructure is then dedicated to the City and the installation is integrated into the new infrastructure; and

(6) Controlling the installation location.

"CPUC" means the California Public Utilities Commission.

"Director" means the City's Director of Public Works – Engineering & Transportation Department or designee.

"Distributed Antenna System (DAS)" means a network of one or more Antenna and fiber optic nodes connecting to a common base station or "hub."

"EMF" means Electro-magnetic Frequency.

"Existing Height" means the height of the structure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.

"Interference" means physically or electronically affecting the operation, views, signals or functions of City equipment or third-party equipment.



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**Commented [WL5]:** Current definition of "collocation" is incorrect. See FCC 18-133 para. 140; 47 CFR Subpart U Section 1.6002(g)

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"Laws" means any and all applicable federal, state and local ordinances, resolutions, regulations, administrative orders, or other legal requirements.

"Macrocell Site" is a location that provides the largest area of coverage within a mobile network. The Antennas for macrocells can be mounted on ground-based masts, rooftops or other existing structures. They are generally positioned at a height that is not obstructed by terrain or buildings. They provide radio coverage over varying distances depending on the frequency used, the number of calls made and the physical terrain. Macrocell Base Stations typically occupy space greater than eight cubic feet for station equipment, greater than three cubic feet per Antenna and three or more Antennas. Macrocells have a typical power output in hundreds or thousands of watts.

"Minor Modification" means changes to an existing WCF or structure that results in less than a Substantial Change.

"Modifications" means changes to an existing WCF or structure that result in a Substantial Change to the structure, increase the number of antennas, increase the size of the antennas or increase the EMF output of the WCF.

"Public right of way" ("PROW") or "right-of-way" means the area on, below, or above a city owned or controlled street or alley public right of way and the sidewalk and/or parkway adjacent thereto.

"Routine Maintenance" means ensuring that a WCF and structure is kept in good operating condition. Routine Maintenance includes, but is not limited to: inspections, testing and alterations that do not qualify as Modifications. An encroachment permit, excavation permit and traffic control plans may still be required depending on the scope and type of work required. Replacing the existing antennas with new, larger antennas or increasing the number of antennas does not qualify as Routine Maintenance.

"Site" means the WCF area occupied by the structure supporting the Antenna, the Accessory Equipment and the path of the wires and cable connecting the Antenna to the Accessory Equipment.

"Small Cell Site" is an umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. The cumulative Base Station equipment for a Small Cell sites occupy no more than seventeen (17) cubic feet, including any pole-mounted Transmission Equipment, preexisting enclosures, Transmission Equipment on the ground associated with Antennas on the structure, but exclusive of Antennas and vertical cable runs for the connection of power and other services. Small cells occupy no more than eight cubic feet for all base station equipment, and no more than three cubic feet per antenna with a maximum of two antennas and typically have a range from ten meters to several hundred meters. Types of small cells include femtocells, picocells and microcells – broadly increasing in size from femtocells (the smallest) to microcells (the largest).

"Substantial Change" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.

"WCF PROW Permit" is a permit authorized under this Article 4 for a WCF installation in the PROW.

**Commented [WL6]:** This provision is contrary to the FCC rules, which do not place any limit on the total number of antennas. See 4CFR Sectin 1.6002 (l)

**Commented [WL7]:** This particular configuration/distribution of the total cub measurement allotments is not found in the federal rules. This section is not in alignment with federal rules.

"Wireless Local Area Network (Wi-Fi)" means a wireless networking technology that allows computers and other devices to communicate over a wireless signal mainly using the 2.4 gigahertz (12 cm) UHF and 5 gigahertz (6 cm) SHF ISM radio bands. It describes network components that are based on one of the 802.11 standards developed by the Institute of Electrical and Electronics Engineers.

"Wireless Communications Facility (WCF)" means any facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A WCF can consist of one or more Antennas and Accessory Equipment.

**SECTION 7-4.20**. Application Required for Wireless Communications Facility Public Right of Way Permit

(a) The applicant for a WCF PROW Permit shall submit an application on a City approved form to the Public Works Department and pay any lawful required fee as established by City Council resolution in its Master Fee Schedule. The application must include all required information. Applications shall be rejected if all attachments are not included at the time of submittal. The Director has the discretion to require applications be submitted by appointment only and to set the frequency and number of appointments that will be granted each day.

(b) In addition to any other application requirements, all utilities granted access to the right-of-way by the California Public Utilities Commission (CPUC) shall file with the City of Hayward a copy of their certificate of public necessity and convenience (CPCN) or submit a copy of said CPCN with each application for a wireless facility. The applicant shall also provide evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless services utilizing the proposed wireless communications facility.

(c) For any change to an existing facility, the Director may require documentation to establish whether the change to the site is substantial, whether new Antennas are added or whether the change will result in an increase in EMF output.

(d) For a Minor Modification or a Modification, the applicant shall submit an application on a City approved form to the Public Works Department. The application shall include:

(1) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to include and identify:

i. Title sheet.

ii. Site plan, showing:

1. The exact location and route requested for applicant's proposed facilities, including other improvements in the area;

**Commented [WL8]:** This section is in violation of federal rules, namely FCC 18-111. Local governments cannot refuse to accept or process applications as such actions constitute defacto moratoria and thus are effective prohibitions in violation of federal law. In addition the appointment structure referenced is likely to conflict with FCC 18-111 because under certain circumstances, such as that posed by large application numbers, the city may not be able to grant submittal appointments with sufficient frequency. Such inability to accept and process applications will constitute a de facto moratorium. *In the Matter of Accelerating Wireline Broadband deployment by Removing Barriers to Infrastructure Investment*, FCC 18-111, 149 (Aug, 2018) ("FCC 18-111"). The proper process for handling incomplete applications is to issue a notice of incompleteness in accordance applicable FCC regulations.

2. If excavation is required the plans must include the location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public right of way along the proposed route;
3. The location(s), if any, for interconnection with the facilities of any other parties; and
4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

iii. If installing additional equipment or changing equipment on the pole include load calculations.

iv. Details of equipment to be installed and the proposed location(s).

v. Include all existing and proposed improvements in the project area.

vi. The site shall be designed per Design Standards included in these guidelines.

(2) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).

(3) Copy of permit and approved plans for the existing facility.

(4) Completed wireless site evaluation form with new equipment signed by certifying licensed engineer.

(e) For a Co-location Application, the applicant shall submit an application on a City approved form to the Public Works Department. The application must be submitted per this Policy and include all required attachments, including:

(1) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to include and identify:

i. Title sheet.

ii. Site plan. If excavation is required the plans must include the size, depth and location of all subterranean infrastructures in the excavation area.

iii. Load calculations.

iv. Details of equipment to be installed and the proposed location(s).

v. Include all existing and proposed improvements in the project area.

vi. The site shall be designed in accordance with any Design Standards in this Article.

(2) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).

(3) Completed wireless site evaluation form signed by certifying licensed engineer that includes the combined emissions of all antenna sectors (old and new).

**Commented [WL9]:** Local governments are entitled only to information sufficient to confirm compliance wit established FCC RF emission levels. Such requirement is met by less burdensome means. See FCC 00-408

(f) For all new wireless communications facilities and substantial changes to existing wireless communications facilities not covered under Section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), the applicant shall submit an application on a City approved form to the Public Works Department. The application shall include:

(1) Title Sheet showing:

i. The name, address and telephone number of both the applicant and the owner of the telecommunication facility or WCF;

ii. The name, address and telephone number of the responsible person whom the City may contact at any time concerning the telecommunication facility or WCF;

(2) Legal authority to occupy and use for the purpose mentioned in the application, the streets, alleys, sidewalks or other public places where the excavation, placement, location or installation of telecommunication facilities or WCF is proposed to be made;

(3) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to identify and include:

i. The pole number(s), address, and latitude/longitude GPS coordinates of the location of the pole or poles;

ii. Site plan, showing:

1. The exact location and route requested for applicant's proposed facilities, including other improvements in the area;

2. If excavation is required the plans must include the the location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public way along the proposed route;

3. The location(s), if any, for interconnection with the facilities of any other parties; and

4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

iii. Load calculations.

iv. Details of equipment to be installed and the proposed location/s.

v. Include all existing and proposed improvements in the project area.

vi. The site shall be designed in accordance with the Design Standards included in this Chapter.

(4) Engineering certification demonstrating compliance with all existing RF emission standards. The technical information submitted must include support/analysis to justify the proposed location and height of the telecommunication facility or WCF;

(5) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable);

(6) A construction plan and schedule, to include start and end dates and phasing, as required by the City, including additional telecommunication facility or WCF locations which the applicant plans to install within five years from the date of application submittal. In the event an Applicant states it does not know its construction plans for a five-year period the Applicant must provide a declaration stating that fact and shall provide its construction plans as known in Applicants management and engineering planning processes, which shall be for a reasonable period of time in no event less than two years;

(7) If the applicant's proposed facility involves installing a replacement structure (e.g., a pole) in the public right of way and attaching additional facilities, or installing a facility on a pole owned by a third party, the applicant shall also provide a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the wireless facility at the location proposed, including proof that the applicant is authorized by the owner of the structure to install and operate the proposed wireless facility on the structure. Such submissions need not disclose financial terms;

(8) If the site is adjacent to a property or area that is included in or eligible for inclusion in the National Register of Historic Places, an Environmental Assessment as defined by the National Environmental Protection Act;

(9) All applicants shall submit a justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option;

(10) A coverage map indicating the area which will be served by the proposed telecommunication facility or WCF; and

(11) A non-refundable application and processing fee, in an amount established by resolution of the City Council to defray the City's costs to

**Commented [WL10]:** FCC 18-133 effectively eliminates the significant gap/least intrusive means analysis. See FCC 18-133 para. 36-37, et seq. and FN 94. All that is required of the applicant in regards to justification, is to show it is introducing new or improving existing telecommunications services.

process the application and to inspect the telecommunication facility or WCF.

(g) In the event a state or federal law prohibits the collection of any information required by this Section, the Director is authorized to omit or modify the city's application form to comply with applicable law.

(h) Pre-submittal Requests.

(1) The applicant may request a pre-application consultation/submittal to the City. This consultation is for the applicant to ask questions, receive guidance on specific requirements of this Article, and receive verbal feedback on specific elements to assist in the design of their site. Multiple proposal options may be provided for the same location under one Pre-submittal application.

(2) Pre-submittal Application request is to be made on a City approved form to the Public Works Department and shall include any required fee as established by City Council resolution in its Master Fee Schedule for each submittal. The form shall include a tolling agreement that states the applicant's understanding that the meeting in no way constitutes review of their application and that any applicable "shot-clock," or limits on application review time provided under state or federal law, regarding their project will not begin until an official application has been submitted.

(3) The pre-application request shall include:

i. Electronic plans (in pdf format) to include:

1. Site plan;
2. Details of equipment to be installed and the proposed location(s);
3. Include all existing and proposed improvements in the project area; and
4. The site shall be designed per Hayward Municipal Code Design Standards included in these guidelines.

ii. Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).

(4) Collaboration. Once conceptual review has been completed, the Public Works Department and the applicant may communicate to address comments and resolve issues identified in advance of an application being submitted. When necessary, at the request of the applicant, City Staff may conduct site visits with the applicant to address and/or resolve specific issues related to the site. The applicant may request a meeting with City Staff to review and discuss conceptual review comments, subject to any applicable fees.

**SECTION 7-4.30**. Application Withdrawn

An application for a WCF PROW Permit will be deemed withdrawn if, after it has been processed by the City, the City has sent the applicant a communication requiring a response from the applicant and more than sixty (60) days lapse without a response from the applicant. Once an application has been withdrawn it may not be reopened and a new application must be made. No refunds will be provided for withdrawn applications.

**SECTION 7-4.40.** Application Fees

The application for a WCF PROW Permit shall be accompanied by an application processing fee established by resolution of the City Council for its Master Fee Schedule. All fees shall be paid in full before any permit is issued by the City. Application processing fees must be paid at the time that the application is submitted. These fees are for permit processing and issuance only and are in addition to any other applicable fee or any separate payments that may be required for use of City infrastructure.

**SECTION 7-4.50** Administrative Review

(a) The following WCF PROW Permit applications are subject to Administrative Review:

(1) Routine Maintenance to an existing WCF;

(2) A Minor Modification to an existing WCF;

(3) Optional pre-submittal applications (which include a tolling of the shot clocks);

(4) Co-location, meaning the addition of a new wireless carrier to an existing and eligible wireless communications facility on an existing base station that will not result in a Substantial Change to the existing facility; and

(5) Existing wireless projects that replace existing equipment with the like kind, number and size of the existing equipment and do not increase the EMF output of the WCF and are considered to be Routine Maintenance.

(b) The Director may designate staff to review and approve applications for Administrative Review. These applications are reviewed at the Public Works counter as an over the counter permit.

(c) Administrative Review approval shall be granted if the Director, or designee, finds that:

(1) Application is complete and any associated fee is tendered to the City;

(2) The proposed facility meets the definition for the type of facility proposed;

(3) The plans are stamped by a registered civil engineer;

(4) The proposed facility complies with the requirements of the Hayward Municipal Code and all other applicable Laws;

(5) The proposed facility will not interfere with the use of the PROW; and

**Commented [WL11]:** See correct definition for "collocation" comment above.

(6) The applicant has provided a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the proposed facility at the proposed location.

(d) Following Administrative Review and Approval and a WCF PROW Permit is issued, the applicant can begin to pursue construction and encroachment permits as required. The WCF PROW Permit issued under this Chapter is not valid without all required construction and encroachment permits and any required license under the Hayward Municipal Code.

**SECTION 7-4.60** Discretionary Review.

(a) The following WCF PROW Permit applications are subject to Discretionary Review:

(1) New installation of any form of WCF at any location where there is not currently a WCF;

(2) New installations where there is a WCF for another carrier;

(3) A Modification to an existing WCF;

(4) Addition of a new wireless carrier to an existing and eligible WCF that do result in Substantial Change (and are not considered a co-location and are considered new installations); and

(5) Existing wireless projects that result in a change to the existing Site, whether a Substantial Change or not, or add new Antennas or increase the EMF output of the WCF.

(b) Applications for Discretionary Review shall require Noticing as follows:

(1) The City, at applicant's sole cost, shall mail a notice, in a form approved by the Director, to all owners of real property as shown on the County's current equalized assessment roll, and all occupants within a radius of 300 feet from each antenna location being proposed. The notice shall describe the proposal and the 14-day comment period.

(2) The 14-day comment period will run from the date the notice is deposited in the mail. The City will accept comments from the public during this comment period.

(c) The Director is the review authority for Discretionary Review applications.

(d) Determination. Following the 14-day comment period, the Director shall review the application, pertinent documentation and public comments. Provided all of the following findings of fact are made, the Director shall issue a written letter of determination and mail it to the applicant. The Director may impose additional conditions on the permit relating to time, place and manner. The following findings are prerequisites of an approval:

(1) The proposed facility complies with all of the applicable provisions of the Hayward Municipal Code;

**Commented [WL12]:** The FCC recently clarified this issue as applicable to all Shot Clocks under 47 U.S.C. Section 332, finding the local authority must issue within the applicable Shot Clock period "*all* authorizations necessary for the deployment of personal wireless services infrastructure. FCC Order 18-133 at para. 132-134, 144. State law also requires issuance of all applicable approvals within the applicable Shot Clock period. As the State Legislature made very clear in its enactment of AB 57 (Gov. Code, § 65964.1. (a)), expiration of the Shot Clock Rule time periods means the project is shovel ready, not merely poised for another round of bureaucratic inertia such as an encroachment permit or appeals processes.

**Commented [WL13]:** All requirements listed must be non-disriminatory. Moreover, the shot clock applies to any appeal processes, and Director's additional conditions must also be non discriminatory, reasonable (technically feasible and directed to avoiding or remedying intangible public harm of unsightly/uncharacterisic deployments, incorporate ascertainble standards, be applied in a principled manne, and be published in advance. See FCC 18-133 para. 81 et seq.

**Commented [WL14]:** See correct definitin of "collocaton"as noted in the above comments.

(2) The proposed facility will not interfere with the use of the PROW;

(3) The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW;

(4) The proposed facility can be mitigated so that its impacts do not result in a material change to the character of the location and the facility relates harmoniously with the surrounding neighborhood;

(5) The proposed facility's impacts have been mitigated through the use of Camouflage and Concealment Elements;

(6) The proposed facility is in compliance with all Federal, State, and local standards and Laws; and

(7) The applicant has provided a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the proposed facility at the proposed location. If the applicant proposes placement of the proposed facility on City property, any approval shall be conditional on City Council approval of the applicant's MLA.

(e) Modifications. The City shall require that Modifications to existing facilities bring the Site into compliance with all current Laws. Proof of the applicable contractor's licenses and insurance shall be required before the permit will be issued and must remain valid during construction.

(f) If following Discretionary Review, a WCF PROW Permit is issued, the applicant can begin to pursue construction and encroachment permits as required. The WCF PROW Permit issued under this Chapter is not valid without all required construction and encroachment permits and any required license under the Hayward Municipal Code.

**SECTION 7-4.70** Appeals.

Any applicant or interested party may appeal the Director's decision to the City Council within fourteen (14) calendar days after a determination has been made on the application. The appeal must be submitted in writing on an approved City form, along with any required fee, to the City Clerk within 14 days after the published determination letter and shall state the specific reason(s) for the appeal along with any supporting evidence. In the event that a decision is appealed, the City Clerk shall schedule the appeal for a public hearing and provide the Council with the record of any prior proceedings. The time and date of the appeal hearing before City Council shall be served on the public by the City in the same manner as the initial Noticing. As Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals to the Director's decision premised on the environmental effects of radio frequency emissions will be rejected. An action of the Director of Public Works appealed to the City Council shall not become effective unless and until approved by the City Council.

**Commented [WL15]:** The FCC recently clarified this issue as applicable to all Shot Clocks under 47 U.S.C. Section 332, finding the local authority must issue within the applicable Shot Clock period "*all* authorizations necessary for the deployment of personal wireless services infrastructure. FCC Order 18-133 at para. 132-134, 144. State law also requires issuance of all applicable approvals within the applicable Shot Clock period. As the State Legislature made very clear in its enactment of AB 57 (Gov. Code, § 65964.1. (a)), expiration of the Shot Clock Rule time periods means the project is shovel ready, not merely poised for another round of bureaucratic inertia such as an encroachment permit or appeals processes.

Decisions of the City Council on such appeals shall be final and not subject to further appeal.

**SECTION 7-4.80** Licenses for use of City Property.

In addition to the WCF PROW Permit required under this Article and any required encroachment and construction permits, the applicant shall also obtain a license from the City for the use of City property if the WCF is proposed on a City-owned or City-controlled pole, structure or property. Any Director approval under this Article is conditional on the applicant obtaining and maintaining a valid City License if the WCF PROW Permit involves the use of City property.

**SECTION 7-4.90** Construction and Encroachment Permits.

Immediately following approval of the WCF PROW Permit and any required license, an applicant may begin the process of applying for construction and/or encroachment permit(s). The construction and/or encroachment permit(s) shall not be issued until the fourteen (14) day appeal time for challenging the issued WCF PROW Permit has passed. The permit issued under this Article is not valid without all required construction and encroachment permits. To begin the process the applicant must submit the following documentation to Public Works Department, in addition to any other information required under this Code for an encroachment or construction permit:

(a) The identity and address of the applicant, including all affiliates of the applicant;

(b) A description of the services that are or will be offered or provided by licensee over or through its facilities;

(c) A description of the transmission medium and capacities that will be used by the licensee to offer or provide such services, both within and outside the City's corporate boundaries;

(d) Engineering plans, specifications and a network map in both paper and electronic GIS-compatible file format of the facilities to be located within the City and any franchise or license area, all in sufficient detail to identify:

(1) A site plan showing the exact location and route requested for applicant's proposed facilities, including other improvements in the area;

(2) The location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public way along the proposed route;

(3) The location(s), if any, for interconnection with the facilities of any other parties; and

(4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

(e) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing vertical infrastructure along the proposed route;

**Commented [WL16]:** Se above comment.

**Commented [WL17]:** The information requested is unnecessary. See above comment regarding justification requirements under FCC 18-133

(f) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient details to identify:

(1) The excess capacity currently available in such ducts or conduits before installation of applicant's facilities; and

(2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities.

(g) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(1) The location proposed for the new ducts or conduits; and

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's facilities.

(h) A preliminary construction schedule and completion date;

(i) A preliminary traffic-control plan in accordance with the latest Manual on Uniform Traffic Control Devices;

(j) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application;

(k) Information to establish that the applicant has obtained all other governmental approvals, permits, licenses and certifications to construct and operate the facilities and to offer or provide the subject services;

(l) An accurate map showing the location of any existing facilities in the City or license area that applicant intends to use or lease or could reasonably use or lease;

(m) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions;

(n) A description of applicant's access and line extension policies;

(o) The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire license area;

(p) In the case of installation of new communications facilities, evidence that any CPUC "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain;

(q) All required fees, deposits or charges required as required under this Code or established by City Council resolution; and

(r) Such other and further information as may be required by the Director.

**SECTION 7-4.100** Periodic Review.

Permits are valid for a period of ten (10) years from the date issued. To extend the permit for additional five (5) year period(s) the permittee shall provide proof that it continues to have the legal authority to occupy and use the PROW for the purpose set

**Commented [WL18]:** In kind contributions are preempted. See FCC 18-133 FN 252: "Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality, such as installing a communications network dedicated to the municipality's exclusive use ... Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a).

**Commented [WL19]:** Again, such additional requirments are subject to FCC 18-133, including publication in advance.

forth in its permit, that its site as it exists at the time of the renewal is in full compliance with the applicable City permits issued for the site, pay the fees for renewal, and amend the permittee's Small Cell Master Lease Agreement (MLA) with the City if the Permit involves the use of City property. Additionally, the carrier must provide an affidavit confirming that the site is still in compliance with the Federal Communications Commission regulations. Failure to submit such an affidavit or proof of legal authority to occupy or use the PROW shall be grounds for non-renewal of the permit. The burden is on the permittee to demonstrate that the site complies with the requirements herein. Notwithstanding anything to the contrary in this Section, for any WCF on a City-owned or City- controlled pole, structure or property, the term of the WCF Permit shall not extend beyond the term of any required license under Section 7-4.80.

**SECTION 7-4.110** Inspection and Reporting.

Commented [WL20]: This section is discriminatory if applicable only to wireless telecommunications PROW users.

A permittee when directed by the City, must perform an inspection of its permitted WCF and submit a report to the Public Works Department on the condition of the system to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City infrastructure additional maintenance concerns may be identified. Upon the City reporting any identified maintenance concerns to the permittee, the permittee shall have thirty (30) days to correct the identified maintenance concerns. If the permittee fails to address the City's concerns, the City reserves the right to take any action it deems necessary, including the revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the WCF shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

**SECTION 7-4.120** Revocation.

Any permit or other authorized use of the PROW granted under this Ordinance may be revoked or modified for cause in accordance with the provisions of this Section.

(a) Revocation proceedings may be initiated by the Director at any time provided the Director gives the permittee ten (10) days' notice prior to the revocation hearing.

(b) Public Notice, Hearing, and Action. After conducting a duly-noticed public hearing, the Director or designee shall act on the proposed revocation within a reasonable time.

(c) Required Findings. The Director or designee may revoke or modify the permit if it makes any of the following findings:

(1) The permittee obtained the approval by means of fraud or misrepresentation of a material fact;

(2) The permittee substantially expanded or altered the use or structure beyond what is set forth in the permit or substantially changed the installations character;

(3) The use in question has ceased to exist or has been suspended for 6 months or more;

(4) Failure to comply with any condition of a permit issued or any term of a required license under this section or any other section of the Hayward Municipal Code;

(5) Failure to comply with this Article;

(6) A substantive change of law affecting a utility's authority to occupy or use the PROW or the City's ability to impose regulations relating to such occupation or use;

(7) A facility's Interference with a City project;

(8) A facility's Interference with vehicular, bicycle, or pedestrian use of the PROW;

(9) Failure to make a safe and timely restoration of the PROW;

(10) When circumstances make revocation in the best interest of the City.

**Commented [WL21]:** Overly broad and susceptible to abuse.

(d) Notice of Action. A written determination of revocation specifying the reasons for the revocation shall be mailed to the WCF owner within 10 days of such determination.

(e) A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal as set forth in Section 7-4.70. Review of the Director's decision to revoke the permit by the City Council shall be *de novo.* Review shall be limited to the evidence presented at the revocation hearing.

**SECTION 7-4.130** Interference.

(a) The WCF installation shall not damage or interfere in any way with City Property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

(1) Signal Interference – The permittee shall correct any such interference within 24 hours of written notification of the Interference. Upon the expiration of the 24-hour cure period and until the cause of the Interference is eliminated, the permittee shall cease operation of any WCF causing such Interference until such Interference is cured.

(2) Physical Interference – In non-emergency situations, the City shall give the permittee 30 days to correct the interference after which the City reserves the right to take any action it deems necessary at the permittee's sole expense, which could include revocation of the permit.

(b) The City, at all times, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Sites. Such actions may temporarily interfere with the operation of the WCF. The City will in all cases, other than emergencies, give the permittee 30 days written notification of such planned, non-emergency actions. In emergency situations, the City will give notice when it is reasonably feasible which, may be after the interference is abated. The permittee shall reimburse the City for all abatement actions caused by permittee's use of the

Sites within thirty (30) days of the City mailing or otherwise serving an invoice on permittee.

**SECTION 7-4.135** Site Selection Guidelines and Criteria.

(a) Wireless facilities installed on City-owned infrastructure in the public rights-of-way shall use a valid master license agreement, approved by the City Council.

(b) Traffic Obstruction. The placement of the telecommunication facility shall not permanently impede vehicular, bicycle, or pedestrian traffic flow.

(c) No modification to above-ground or at-grade telecommunication facilities, including those related to size, color and shape of the housing, may be made by the permittee without first having obtained approval of the Director.

(d) To the maximum extent feasible, all appurtenant equipment, including radio base station, electrical panel, and control panel assembly, shall be placed below ground. Where feasible, as new technology becomes available, the permittee shall place an existing or proposed above-ground telecommunication facility below ground.

(e) No electrical meters will be allowed. The permittee should negotiate directly with the electric utility to determine a flat rate for installation. The applicant is responsible for the cost of all electrical usage. This provision ~~may~~ shall be waived on a case-by-case basis by the Director if the permittee is able to demonstrate use of flat-rated electricity is not feasible.

(f) No net new TF or WCF Poles or Towers shall be allowed in the PROW or on City property, except for approved replacements. This provision ~~may~~ shall be waived on a case-by-case basis by the Director if the Applicant is able to demonstrate there are no alternatives that are aesthetically preferable.

(g) No net new Transmission Equipment shall be installed above grade on a pedestal, cabinet, or other structure that is detached from the Pole or Tower in the PROW absent demonstration of clear benefit to the City. All Transmission Equipment shall be mounted on the approved Pole using Low Profile equipment or installed below grade in a vault. Vault vents must be flush to the ground.

**SECTION 7-4.140** Visual Impact Guidelines.

(a) Unobtrusive Design. Telecommunication Facilities shall be designed to be as visually unobtrusive as feasible. Colors and designs must be visually neutral, integrated and compatible with surrounding buildings and/or uses in the area. Facilities shall be sited to avoid or minimize obstruction of views from adjacent properties and otherwise preserve the aesthetic integrity of the public right of way.

(b) An antenna array shall be installed as a shared use on an existing or replacement pole and shall not extend over seven feet beyond the top of the pole. However, no telecommunication facility located within 140 feet of a residential property shall exceed thirty-five (35) feet in height. Additionally, no telecommunication facility shall exceed sixty (60) feet in height from the ground level as measured from the nearest street curb. The Director may modify these

**Commented [WL22]:** Discriminatory where this section is used to require applicant relocate or install its facilities underground where and when other utilities are not also required to do so, such as in a Rule 20 underground relocation.

**Commented [WL23]:** This is up to the electricity provider--not the applicant.

**Commented [WL24]:** In conflict with applicant's rights to install its facilities in the ROW throughout the state pursuant to its CPCN state-wide franchise. CA PUC 7901.

**Commented [WL25]:** Likely discriminatory in violation of federal law.

requirements if necessary to accommodate General Order 95 of the California Public Utilities Commission.

(c) Camouflaged Design and Screening. When feasible, Applicant shall use state of the art, well camouflaged designs and screening to minimize visual impact of the telecommunication facility. For example, the visual impact of a telecommunication facility may be mitigated by integrating it into existing functional facilities, by the planting of trees to screen the antenna from adjacent private properties.

(d) Landscaping. New landscaping and irrigation designs shall be restored to like or better condition approved by the Director in accordance with the City's landscaping standards.

(1) For telecommunication facilities installed in the PROW in an area where no sidewalk exists, the permittee shall install landscaping immediately surrounding the installation and restore any landscaping disturbed by the installation. The installed and restored landscaping shall be consistent with the existing surrounding landscaping.

(2) All new landscaping shall be served by an automatic irrigation system installed, or if existing, modified, to sustain landscaping. If an automatic irrigation system is not feasible, applicant shall submit a manual irrigation plan with its application and guarantee to replace any vegetation that dies from lack of watering.

(e) No Telecommunication Facility shall be illuminated unless specifically required by the FAA or other governmental agency for security or clearance purposes.

(f) Signs and Advertising. No advertising signage or identifying logos shall be displayed on any telecommunication facility except for small identification, address, warnings, and other similar information plates. Such information plates shall be identified in the an applicant's application and shall be subject to approval by the Director.

(g) If an applicant proposes to replace a pole in order to accommodate their telecommunication facility, the pole shall match the appearance of the original pole to the extent feasible and shall be approved by the Director.

(h) Historic Structures. The telecommunication facility should not be located immediately in front of, beside or behind historic resources recognized by the City pursuant to Chapter 10 of this Code.

**SECTION 7-4.145** Design and Other Standards for all sites in PROW.

(a) Engineering calculations sealed by a registered professional engineer licensed in California shall be provided to ensure that the existing pole and footing are adequate to support the new loads. When it is determined that the existing infrastructure is not adequate to support the new loads, the applicant may propose to replace the existing infrastructure with adequate, City approved, new infrastructure at the applicant's expense.

(b) No Antenna owner or operator shall install an Antenna or any related facility on a joint-use pole unless such installation is designed and constructed to comply with the current edition of CPUC General Order 95.

(c) Where the City determines that it requires expert assistance in evaluating an application, the City may hire a consultant and to the extent permitted under applicable regulations, the fee charged by the consultant shall be reimbursed to the City by the applicant regardless of the outcome of the application.

**Commented [WL26]:** See FCC 18-133 at para.56.

(d) Signage will be maintained in legible condition and the permittee will be required to replace any faded signage within 30 days of receiving written notification from the City that it is in need of replacing.

(e) All wireless communications facilities, including on-site generators, shall be designed to be compliant with the Section 4, Article 1 of this Code and all other applicable Laws. Failure to comply with the City's adopted noise standard after written notice and opportunity to cure have been given shall be grounds for the City to revoke the permit.

(f) All cabling and wiring must be contained in conduit, affixed directly to the face of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed.

(g) No historic or decorative street lights are eligible for WCF installations.

(h) The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

(i) The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation, removal, and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the Director shall cause such repair to be completed at permittee's sole cost and expense.

(j) The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. Each year after the permittee installs the wireless

facility, the permittee if requested by the Director shall submit a written report to the Director, in a form acceptable to the Director, that documents the then-current site condition.

(k) Property Maintenance. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the Approved Plans are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to this permit. The permittee further acknowledges that failure to maintain compliance with this condition may result in a revocation of the permit or any other remedy available to the City under the law.

**SECTION 7-4.150** Macrocell Sites in the PROW.

(a) Site Selection:

(1) Preferred locations are on existing infrastructure such as street lights. The infrastructure selected shall be located at alleys and near property line prolongations. If the facility is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such Site was not feasible.

(2) When existing infrastructure Sites have been exhausted, the City may require that the applicant provide new infrastructure such as a street light, on which the WCF can be installed. In such cases, the new infrastructure shall be dedicated to the City and will have a primary purpose other than as a WCF and the WCF will be the secondary use. This installation will be defined as a wireless Base Station.

(3) When all other preferred Sites have been exhausted and new infrastructure is not feasible, the applicant may request the installation of a new tower, camouflaged by City approved methods.

(b) Existing Infrastructure requirements

(1) Street light.

i. The installation shall not increase the total height by more than 10% or ten feet, whichever is greater, over other street lights in the area.

ii. The Antenna must be mounted to the top of the pole, or flush to the pole near the top, in a RF transparent screen that is coated or painted an approved color to match the street light pole. The screen is considered to Camouflage the installation.

iii. Equipment, other than Antennas, must be in an underground vault. Vault vents must be flush to the ground.

iv. Wires and cables must run in conduit inside the pole. Underground entry into the pole through the foundation is required.

v. As requested by the City, the applicant or carrier shall host on-site training for City maintenance staff at no cost to the City or its employees. The training will be offered for each WCF project on a street light pole. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information.

**Commented [WL27]:** Discriminatory if not also imposed on other utilities.

(2) Utility Pole.

i. Antenna installations will be top of pole mount. If this is not feasible due to California Public Utility Commission rules, then a replacement pole must be installed to comply with this requirement and the Commission rules.

ii. The Antenna must be in a RF transparent screen that is coated or painted an approved color to match the pole. The screen is considered to Camouflage the installation.

iii. Equipment, other than Antennas, must be in an underground vault. Vault vents must be flush to the ground.

iv. If the existing utility pole already has more than two existing risers/drops, the pole must be replaced with a metal pole that allows the new cable and wires to be inside the pole, in conduit. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When the installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color or in commercially available black or dark brown conduit, as directed by the City.

(c) Traffic pole. Installations on traffic poles shall not be allowed.

**SECTION 7-4.160** Small Cell Sites in the PROW.

(a) Site Selection:

(1) The preferred location shall be on existing infrastructure such as utility poles or street lights. Where feasible, The infrastructure selected should be located at alleys and near property li~~n~~e prolongations. If the facility is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such Site was not feasible.

(2) When existing infrastructure Sites have been exhausted, the City requires that the applicant dedicate new infrastructure such as a street light, on which the WCF can be installed. In such cases, the new infrastructure shall be owned by the City and will have a primary purpose other than as a WCF and the WCF will be a secondary use. This installation will be defined as a wireless Base Station.

(b) Existing Infrastructure requirements

(1) Street light:

i. The Antenna shall be the smallest possible volume but in no case greater than three cubic feet. The Antenna must be enclosed in an RF transparent screen unless a whip style antenna is used. Antenna installations will be top of pole mount and shall not increase the height by more than 10% or ten feet, whichever is greater, over other street lights in the immediate vicinity. The small size of the Antenna or RF screen, and color treatment is considered to Camouflage the installation.

ii. Equipment, other than Antennas, shall be mounted as prescribed by the Director in one of the manners described.

1. Equipment shall be mounted in a base shroud of approved design to be retrofitted to the existing light standard. The base shroud shall be coated or painted with an approved color to match the existing pole.
2. Equipment shall be mounted directly to the pole a minimum of eight (8) feet above the existing grade and be coated or painted with an approved color to match the existing pole.
3. Equipment shall be mounted to the pole in an equipment box a minimum of eight (8) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the existing pole and will be no wider than two times the diameter of the pole at the point it is mounted nor protrude from the surface of the pole by more than eight inches.

iii. The applicant may propose, or the City may require, that the existing light standard be replaced with a City approved pole that is manufactured with a base shroud designed to accept wireless equipment and integrated RF screen to accept a wireless Antenna.

**Commented [WL28]:** Under what circumstances will the city require replacement? This section may be inconsistent with federal requirements that such regulation be applied in a principled manner. FCC 18-133 para. 88.

(2) Utility Pole:

i. The Antenna shall be the smallest possible volume but in no case greater than three cubic feet and shall be mounted at the top of the pole or on the side of the pole with a bracket. When mounted with a bracket the bracket may extend no more than eighteen (18) inches from the surface of the pole and will be coated or painted an approved color to match the existing pole. The antenna must be enclosed in an RF transparent screen unless a whip style antenna is used. The small size of the Antenna or the RF screen, and color treatment is considered to Camouflage the installation.

ii. Equipment, other than Antennas, shall be mounted as prescribed by the Director in one of the manners described.

1. Equipment shall be mounted directly to the pole a minimum of eight (8) feet above the existing grade and be coated or painted with an approved color to match the existing pole.

2. Equipment shall be mounted in an equipment box that is mounted directly to the pole a minimum of eight (8) feet above the existing grade. The equipment or box shall be coated or painted an approved color to match the existing pole and will be no wider than the diameter of the pole at the point it is mounted nor protrude from the surface of the pole by more than eight inches.

iii. If the existing utility pole already has more than two existing risers/drops, the pole must be replaced with a metal pole that allows the new cable and wires to be inside the pole, in conduit. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When the installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color or in commercially available black or dark brown conduit, as directed by the City.

(3) Traffic pole. Installations on traffic poles shall not be allowed.

**SECTION 7-4.170** Distributed Antenna System (DAS).- TERM UNDEFINED

Applications for DAS WCF shall be submitted as a single application and will have a single master license agreement for the entire project if located on City property. Each individual location within the system shall be processed and considered for approval separately. Permitting fees will be applied to each site, in an amount established by City Council resolution as reflected in its Master Fee Schedule. Each location will be evaluated and must comply with the installation design guidelines for the type of Site as defined by this ordinance.

**SECTION 7-4.180** Carrier/Cell on Wheels (COW).

(a) A Carrier-on-wheels (COW) may only be placed in the PROW or City owned property through a use of an encroachment permit.

(b) The setup location requested for the COW will be reviewed and at the discretion of the Director of Public Works or designee may be modified to ensure public health and safety.

(c) The duration of a permit for a COW will be no longer than is necessary to establish the network and provide the temporary coverage required by the event or emergency.

(d) At the discretion of the Director or his or her designee, the permit may be revoked or modified when in the best interest of the City pursuant to the revocation procedures set forth in Section 7-4.120.

**SECTION 7-4.190** Compliance with Applicable Law and Regulations.

This Article is not intended to be the exclusive means of regulating installation of Facilities in the public right of way and nothing herein is intended to waive any other applicable City requirements, including but not limited to building permit, storm water runoff, business license, excavation and undergrounding regulations. The

applicant/permittee shall obtain all permits, licenses, and similar authorizations that are required by other governmental entities for the installation of its Facilities. The applicant/permittee must also be and remain in compliance with all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any federal, state or local governmental body or agency, including without limitation those issued by the California Public Utilities Commission and the Federal Communications Commission.

**SECTION 7-4.200** Nonexclusive Use of public right of way.

All permits to construct or place Facilities in the public right of way shall be nonexclusive. The granting of a permit under this article by the City does not provide any permittee with an exclusive use of the public right of way.

All telecommunication facilities permitted by this Article shall, upon the reasonable demand of the Director, be relocated if required by the City to avoid potential conflicts with a proper governmental use of a PROW including, but not limited to, any street, alley, sidewalk, facility, or other public place. All expenses incurred in relocating pursuant to this Section 7-4.200 shall be paid by the permittee.

**SECTION 7-4.210** Director's Guidelines.

To the extent not preempted by applicable laws, the Director may prescribe additional guidelines covering the location, size and depth of excavations in public streets and sidewalks as the Director may deem necessary for the public safety and welfare. Where such guidelines are general in character and are designed to apply to all excavations of a certain type or nature, they shall be promulgated in writing showing the date of their enactment, and a copy thereof, duly certified to by the Director shall be kept on file where they may be made available for public inspection upon the demand of any person. All Work performed under this Article shall be subject to such guidelines.

The Director may also prescribe Standards and Guidelines for Wireless Communications Facilities in the Public Right-of-Way. The primary purpose of these Standards and Guidelines shall be to provide procedural and design guidance and specific design standards and requirements for project applicants proposing wireless telecommunication facilities in the public right-of-way. The Standards and Guidelines Policy document is also intended for use and reference by City staff in reviewing and approving designs and verifying compliance with this Code. The Standards and Guidelines Policy document may also govern the maximum number of applications for WCF placement based on resource limitations, to promote administrative efficiency and deemed necessary or appropriate to organize, document and manage the application intake process. All such guidelines will be in written form and publicly stated to provide applicants with prior notice. Applicants for small cell permits are encouraged to apply for proposed buildout of entire neighborhoods or other contiguous areas to promote administrative efficiency.

**SECTION 7-4.220** Indemnity; insurance.

Prior to issuance of any permit under this article, each applicant shall:

(a) Represent, stipulate, contract and agree that such applicant will, to the fullest extent allowed by law, indemnify, hold harmless, and defend the City of Hayward, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind for any and all claims for damage to property, or injury to, or death of persons arising out of or resulting from the issuance of the permit or the placement of the WCF, except to the extent any damage or injury is due to the gross negligence or willful misconduct of the City, its officers or employees.

(b) Obtain and file with the Director, and thereafter maintain during the term of any such permit, certificates evidencing comprehensive general liability insurance policy or policies, in a form acceptable to the City Attorney, issued by an insurance company or companies authorized to do business in the State of California. The City of Hayward, its officers and employees shall be named as additional insureds on said policy or policies. The policy limits of said insurance policy or policies shall be not less than one million dollars ($1,000,000.00) combined single limit for both bodily injury and property damage, or equivalent.

(c) Said policy or policies shall also contain a provision that no termination, cancellation, or change of coverage of insured or additional insured shall be effective until after thirty (30) days' notice thereof has been given in writing to the Director.

(d) Applicants who self-insure shall so state and attest in writing in the Application, which self-insurance in an amount equal to the amount required by this Article or the Guidelines, whichever is higher, shall be subject to approval by the City upon presentation to the City of sufficient documentary proof.

**SECTION 7-4.230** Removal Procedures for Abandoned or Discontinued WCF.

(a) The Director may declare a WCF within the PROW abandoned or discontinued when:

1. The permittee notifies the Director that it abandoned or discontinued the use of a WCF for a continuous period of 90 calendar days; or

2. The permittee fails to respond within 30 calendar days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Director that states the basis for the Director's belief that the WCF has been: i) abandoned, or ii) discontinued for a continuous period of 90 calendar days; or

3. The permit expires in the case where the permittee has failed to file a timely application for renewal.

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

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

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

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

(c) If the permittee fails to act as required in 7-4.230(b) within the prescribed time period, the City may remove and dispose of the abandoned or discontinued WCF in any manner allowed by law. The City may, but shall not be obligated to:

1. Restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work; and

2. Use any financial security required in connection with the granting of the WCF permit to recover its costs and interest. Until the costs are paid in full, a lien may be placed on the WCF, all related personal property in connection with the WCF and, if applicable, the real private property on which the WCF was located for the full amount of all costs for removal, restoration, repair and storage.

**SECTION 7-4.240** Permit Non-Compliance; No Waivers.

No permittee shall be excused from complying with any of the provisions of this Article by any failure of the City on any one or more occasions to seek, or insist upon, compliance with any requirements or provisions of this Code. Regardless of the City's failure to seek compliance on any occasions, such action shall not be considered a waiver of any requirements of this Code.

**SECTION 7-4.250.** Future Changes in the Law.

The City's rights under this Article are coextensive with the City's rights under state law with regard to the use of the public right of way. If future changes to state or federal law authorize the City to regulate the public rights of way to a greater degree than is now authorized by this article, nothing in this Article will be deemed to limit, restrict in any way, or to modify the City's exercise of that regulatory authority.

# ITEM #4 LB 19-001

# INTRODUCTION OF AN ORDINANCE OF THE CITY OF HAYWARD, AMENDING CHAPTER 7 OF THE HAYWARD MUNICIPAL CODE BY AMENDING SECTIONS 7-2.00, 7-2.10 AND 7-2.15 AND ADDING SECTIONS 7-2.46 AND 7-2.47 TO ESTABLISH A "DIG-ONCE" POLICY OF INSTALLING UNDERGROUND CONDUITS AND ADOPTION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE FOR RELATED PROGRAM FEES

# E-MAIL FROM BRETT WOOLLUM

## Roxanne Epstein

**From:** Miriam Lens
**Sent:** Monday, January 21, 2019 1:51 PM
**To:** Roxanne Epstein
**Subject:** FW: Dig Once Ordinance - Comments

Hi Roxanne,

It does not seem that this is posted on the website under 1/8 items received after agenda posted. Could you confirm?

Thanks,

Miriam

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**From:** Brett Woollum <brett@tekify.com>
**Sent:** Tuesday, January 8, 2019 2:50 PM
**To:** List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
**Cc:** Allen Baquilar <Allen.Baquilar@hayward-ca.gov>; John Stefanski <John.Stefanski@hayward-ca.gov>
**Subject:** Dig Once Ordinance - Comments

Councilmembers,

I would like to give feedback on the proposed Dig Once ordinance and policy coming to the council this evening. I have some serious concerns, specifically with how the proposed ordinance is contradictory to established (and more recent) law on the subject *as applied to regulated utility companies*. (Some of this may apply differently to unregulated "private" companies looking to lay conduits in the city and I've not addressed that perspective here.)

*I wish staff would have consulted me in detail on this before bringing it to council. I've made myself known to city staff (and council members) over the past few years and have offered to meet with staff to discuss and offer input on any pending communications-related policies. I feel as though there is a lack of detail and understanding of existing state and federal laws as they relate to regulated telecom utilities.*

Please understand this: Specifically, with regard to regulated "telephone corporations" who are granted a statewide franchise by the CPUC to construct facilities within the rights-of-way (and who are governed by the CPUC and various federal laws), the City may not:
- impose a moratoria on construction (the FCC was extremely clear on this in Aug 2018. The City's proposed 5-year moratorium is in direct conflict with federal policy.)
- impose any fee or charge beyond actual cost to provide permitting services
- require a telephone corporation to become licensed by the Contractor State Licensing Board
- require a telephone corporation to construct additional facilities (for the City) that it is not otherwise authorized, licensed or certificated to install
- require a telephone corporation to utilize a third party contractor to construct it's facilities
- condition the approval of a permit on the telephone corporation's acceptance or compliance to construct additional facilities for the City

As far as the Dig Once Ordinance enables interested **and willing** parties (network providers and the City) to work together and collaborate on construction projects goes, it's great. However, the City does not have the authority to then turn around and deny future permits for the construction of facilities by telephone corporations looking to construct facilities on the same section of a City street for the next 5 years (as the ordinance is currently written).

**Put plainly, this ordinance should be modified so it is not in conflict with the law for applicants who are registered telephone corporations in California.** Perhaps verbiage excluding "telephone corporations" from parts of the ordinance is apt.

Thanks for reading. While some of this could potentially come across as trivial, it's critical in how it affects the construction of new services in Hayward and if done wrong, will certainly shape investment by our company (and others) in Hayward. It is clear to me that residents and businesses of Hayward want our fiber internet service. We're working hard to build the business to deliver this.

This Dig Once policy should *encourage* providers to work together to deploy facilities, not create a *barrier* to deployment.

**Modifications to Chapter 7 of the Municipal Code**

"Trench" is not properly defined in a way so as to exclude trenchless installation techniques from the ordinance. While this may seem subtle, or perhaps even obvious to not include trenchless methods of construction, it's a critical distinction because the definition goes on to define "any excavation that is not a micro-trench as defined in this Article is a Trench." This definition should be modified to read "Any excavation that is not a micro-trench or trenchless installation method (such as horizontal directional bore) as defined in this Article is a Trench." "Trenchless installation" and "horizontal directional bore" would then need to be properly defined as well.

The policy as laid out is only technically achievable when open-trench construction is used, not trenchless underground construction where conduits are bored into the ground without the need for an open trench. The poor wording of the ordinance as it stands would unduly apply this policy to trenchless installation methods where adding multiple 3" conduits for the City would not be technically feasible or reasonable like it would be in an open trench in the street. An example would be when directional boring new conduit underground without opening a trench in the street.

Clarity is key here.

**Dig Once Policy Document**

Does not in any way limit the policy from applying to excavations that do not include open trenching (such as trenchless directional boring). See comments above.

**5 year Moratorium**

SEC. 7-2.10 - STREET CUTS. PERMIT REQUIRED.

It shall be unlawful for any person other than officers, agents, contractors or employees of the City to make or cause to be made any street cut in the City of Hayward without having first obtained a permit therefor as herein provided. Any permit issued hereunder shall not be assignable to any other person. ***Excavation permitted under this Article shall not take place more than once on any particular section of City street within a 5-year period unless determined otherwise by the Director of Public Works pursuant to Sec. 7-2.46(d).***

The City does not have authority to impose any moratorium *upon telecommunications providers* that prohibit the deployment of facilities. Time-delay prohibitions like this are barred by Section 253(a) of the Telecom Act in most cases (including here where the City won't allow new phone poles to be installed as an alternative to underground construction).
- Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service. (See 47 U.S. Code § 253(a), etc)

- In August 2018, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a). This includes moratoria that force providers to delay their planned deployments (as would be the case with a 5 year moratorium. See https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf See all of section IV). This ruling makes it very clear that this type of activity by local governments is not allowed.

**Legal Authority (as it applies to California Public Utilities - not private carriers)**
A "telephone corporation" operating under authority granted by the California Public Utilities Commission is authorized to build *it's own* facilities within the public rights-of-way within the State of California. A telephone corporation does not have authority to construct facilities that will not be owned by the telephone corporation - this type of work would require a license from the Contractors State License Board. That is to say, a telephone corporation can't build facilities that will then be owned by the City.

A municipality may not condition any permit or approval on the telephone corporation applicant obtaining a contractor's license (assuming the applicant has been authorized by the CPUC) so it may be authorized to construct facilities for the City.

A municipality may not block a telephone corporation applicant from constructing it's facilities if it does not have a contractor's license.

A municipality may not condition any permit or approval on the applicant constructing (or requiring the applicant to contract to have someone else construct) facilities for the City. This would amount to a barrier to entry and is preempted by federal law. *This is not to be confused with efforts to coordinate joint construction in a joint open trench among willing participants.*

Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service. The City's imposition of requirements that a telephone corporation construct additional conduits for the City as a condition of approval on a permit would limit our entry into any future areas which we intend to construct, therefore limiting competition. This is barred by 253(a).

Critically for this discussion, "telephone corporations" (such as Tekify Fiber, LLC) are exempt from local franchising requirements by statute. Municipalities are prohibited from requiring franchises, franchise fees, payment for the "privilege" of using the PROW, etc, from telephone corporations.

The state has deemed the provisioning of telecommunications services a matter of statewide concern.

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From a previous email sent to city staff on this subject:

- Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph 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 abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters. (See PUC 7901)

- Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to 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. (See PUC 7901)

- Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service. (See 47 U.S. Code § 253(a), etc)

- Government Code 50030 - Limit on permit fees for telephone corporations. Fees must be actual costs, can't feed into City's General Fund. (See GOV 50030)

- Business and Professions Code 7042.5 - California telephone corporations are excluded from state contractor licensing requirements for work related to the business. While we may elect use contractors to construct a portion or all of our lines on this and/or other projects, we are entitled to perform this type of work in-house as well. (See BPC 7042.5) We maintain the necessary insurance for this and the City already has this on file from our previous permit(s).

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Aug 2018 FCC Order:

In the Matter of:
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment &
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment
https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf

tekify fiber & wireless

**Brett Woollum**
CEO & Founder, Tekify
Fiber & Wireless

| | |
|---|---|
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*For the most responsive service, please email all account or service-related questions to our team's shared inboxes at **sales@tekify.com** or **support@tekify.com**. These shared inboxes are monitored constantly by our team members (myself included) to ensure a fast response to your requests.*

*My direct email address is not monitored as often and your requests may go unseen in my absence.*

# ITEM #5 LB 19-002

# INTRODUCTION OF AN ORDINANCE OF THE CITY OF HAYWARD, ADDING ARTICLE 4 OF CHAPTER 7 TO THE HAYWARD MUNICIPAL CODE FOR REGULATING WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY AND ADOPTION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE FOR RELATED PROGRAM FEES

# LETTER FROM VERIZON WIRELESS

**MACKENZIE & ALBRITTON LLP**
155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

January 7, 2019

**VIA EMAIL**

Mayor Barbara Halliday
Councilmembers Francisco Zermeño,
Al Mendall, Sara Lamnin, Elisa Márquez,
Mark Salinas and Aisha Wahab
City Council
City of Hayward
777 B Street
Hayward, California 94541

Re: Draft Ordinance, Wireless Communication Facilities in the Public Right-of-Way
Council Agenda Item 5, January 8, 2019

Dear Mayor Halliday and Councilmembers:

We write on behalf of Verizon Wireless regarding the draft ordinance regulating wireless facilities in the right-of-way (the "Draft Ordinance"). Verizon Wireless is concerned that the Draft Ordinance contradicts a recent Federal Communications Commission ("FCC") order addressing approval criteria for small cells, the type of facility generally deployed in the right-of-way. For example, standards that are technically infeasible or subjective contradict the FCC's direction to provide reasonable, objective criteria. The Draft Ordinance also contradicts state law granting telephone corporations the right to use the right-of-way. Because of this statewide right, the City cannot place certain restrictions on new poles or ground cabinets, nor can the City require Verizon Wireless to demonstrate the need for its right-of-way facilities. Verizon Wireless is willing to discuss its network plans for Hayward and workable regulations for small cells in the right-of-way. We urge the Council to defer adoption of the Draft Ordinance and direct staff to work with industry on needed revisions.

To expedite deployment of small cells and new 5G technology, the FCC adopted an order in September that provides guidance on appropriate approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the "Infrastructure Order").[1] Among other topics, the FCC

[1] While the Infrastructure Order and the Code of Federal Regulations referenced in this letter were released on September 27, 2018, they will not be effective until January 14, 2019.

addressed aesthetic criteria for local approval of small cells, concluding that criteria must be: "(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance." Infrastructure Order, ¶ 86. "Reasonable" standards are "technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments." *Id.*, ¶ 87. "Objective" standards must "incorporate clearly-defined and ascertainable standards, applied in a principled manner." *Id.*, ¶ 88.

As we explain, numerous requirements of the Draft Ordinance contradict the FCC's directives or state law and must be removed or revised. Our comments are as follows.

**All Qualifying Small Cells Should Be Approved Administratively.**

All facilities meeting the FCC's definition of "small wireless facilities" should be approved with an administrative permit if they meet reasonable, non-discriminatory and objective criteria. However, the Draft Ordinance requires a discretionary permit for all new small cells, involving public notice and comment windows with potential appeals. Draft Ordinance § 7-4.60.

Public notice and comment windows are inappropriate for qualifying small cells. Draft Ordinance § 7-4.60(b). Public input introduces subjectivity to decision-making for applications which must be reviewed under objective criteria. Soliciting public comment frustrates both the public and decision-makers. The public's subjective personal concerns simply cannot be addressed by decision-makers implementing what must be an objective process. At most, notice should be provided to adjacent properties for informational purposes only.

Because appeals involve notice and hearings, they also introduce subjectivity to final decisions. Draft Ordinance § 7-4.70. At a minimum, any appeal record should be restricted to the materials that were considered by the Director, and the scope of review should be limited to confirming whether the Director's decision was based on reasonable, objective criteria.

**Subjective Standards Contradict the Infrastructure Order and Must Be Eliminated.**

The Draft Ordinance includes several subjective standards in direct contrast with the FCC's requirement to provide objective criteria for small cells. Such discretionary determinations include "as visually unobtrusive as feasible," "aesthetic integrity," "minimize visual impact," and "integrating it into existing functional facilities." Draft Ordinance §§ 7-4.140(a), 7-4.140(c). These are matters of opinion that could be used to deny facilities that otherwise meet objective criteria. The direction to "avoid or minimize obstruction of views from adjacent properties" is also a subjective determination, and further, the scope of aesthetic review is limited to impacts on the right-of-way because Public Utilities Code Sections 7901 and 7901.1 narrow the City's purview to factors

addressing public use or access of the roadway. These subjective criteria should be stricken.

The Draft Ordinance also contradicts the Infrastructure Order by requiring comparison of multiple alternatives in application materials. Draft Ordinance § 7-4.20(f)(9). The "least intrusive means" standard is subjective, whereas under objective aesthetic standards, a facility either complies, or it does not. The City could not deny a compliant facility due to a discretionary preference for another location or design; the FCC found that such guesswork contradicts objective criteria. Infrastructure Order, ¶ 88. The requirement for an alternatives analysis should be stricken.

The finding requiring "camouflage" and "concealment elements" is subjective and will pose complications for subsequent modifications submitted as eligible facilities requests under federal law. Draft Ordinance § 7-4.60(d)(5). The definition of "camouflage" is subjective, requiring designs to "blend…with the surrounding environment." Draft Ordinance § 7-4.10(definition of "camouflage"). As to concealment elements as defined, requirements to "minimize the size" and integrate facilities into existing infrastructure are similarly subjective, and, for eligible facilities requests, these will be preempted by the FCC's objective substantial change thresholds for height, protrusion and volume. Draft Ordinance § 7-4.10(definition of "concealment elements"), 47 C.F.R. § 1.40001(b)(7)(i-iii). Mandating new infrastructure that "matches" surrounding infrastructure is a subjective and unreasonable requirement that ignores the rights of telephone corporations to use the right-of-way, including joint utility poles. The City does not have unlimited discretion over "concealment elements" under either the Infrastructure Order or FCC rules for eligible facilities requests. This finding and related definitions must be stricken.

**The City Must Provide Reasonable and Objective Criteria for New Poles and Ground-Mounted Cabinets.**

California Public Utilities Code Section 7901 grants telephone corporations the right to erect new poles to elevate their telephone equipment. However, under the Draft Ordinance, new poles would be allowed only if the Director believes there is no "aesthetically preferable" alternative—a subjective criterion that cannot apply to small cells according to the Infrastructure Order. Draft Ordinance § 7-4.135(f). We suggest an objective, reasonable standard that would require applicants to show there is no available, technically feasible infrastructure along the subject right-of-way within 200 feet that can support a small cell.

For new poles, the City cannot require Verizon Wireless to install a street light pole that is then dedicated to the City. Draft Ordinance § 7-4.160(a)(2). This clearly contradicts Verizon Wireless's right under Section 7901 to place and own poles in the right-of-way that elevate only telephone equipment. The City's limited aesthetic review extends to wireless facility equipment, but lighting is not a functional requirement for wireless service.

The restriction on above-grade ground-mounted cabinets contradicts the Infrastructure Order and state law. Draft Ordinance § 7-4.135(g). The condition that a ground cabinet offer "clear benefit to the City" is an inappropriate subjective criterion. As noted, the FCC determined that aesthetic criteria must be non-discriminatory, meaning no more burdensome than criteria applied to "similar" infrastructure. Infrastructure Order, ¶¶ 86-87. If other utilities in Hayward have placed ground-mounted cabinets, then the City would discriminate against wireless carriers if they are not granted the same right.

As to state law, Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their "telephone lines along and upon" public roadways. Public Utilities Code Section 233 defines "telephone line" to include all "wires, cables, instruments, and appliances, and all other real estate, fixtures…to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." State law clearly grants Verizon Wireless the right to place ground-mounted telephone equipment in the right-of-way. Cabinets are occasionally deployed to enclose batteries that provide continued service during emergencies. Instead of a potential ban on ground cabinets, the City should provide reasonable, non-discriminatory and objective standards for them.

**Standards for Small Cell Equipment Must Be Reasonable.**

As a preliminary matter, we note that the Draft Ordinance definition of small cell directly contradicts the definition adopted by the FCC. Draft Ordinance § 7-4.10(definition of "small cell site"), 47 C.F.R. § 1.6002(l). The FCC contemplates up to 28 cubic feet of associated equipment, not 17 or eight, and it does not limit the number of antennas. Under the Draft Ordinance, many qualifying small cells would be inappropriately classified as "macrocell sites" subject to different standards. The definition of small cell site must align with that adopted by the FCC.

The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Infrastructure Order, ¶¶ 86, 90. In a contradiction, one Draft Ordinance provision appears to drive all non-antenna small cell equipment underground (with only a vague caveat for feasibility), while other standards clearly contemplate pole-mounted equipment. Draft Ordinance §§ 7-4.135(d), 7-4.160(b)(1)(ii), 7-4.160(b)(2)(ii). There is no reason to require undergrounding of the pole-mounted equipment components of typical small cells. Wireless carriers developed small cells to provide needed service with minimal visual impact. Small equipment boxes on poles are not "out-of-character" among typical infrastructure in the right-of-way, including wood utility poles. Further, if other utilities place equipment on poles in Hayward, standards may be discriminatory. Blanket undergrounding requirements must be stricken.

The requirement to place small cells along alleys or property lines should be stated as a preference, with an exception if applicants show that such locations are not available

or technically feasible (as described in the same provision). Draft Ordinance § 7-4.160(a)(1).

The City cannot require replacement of a wood utility pole with a metal pole due an increase in the number of cable risers. Draft Ordinance § 7-4.160(b)(2)(iii). Cable risers are typical on utility poles, and even multiple risers are not "out-of-character." This requirement is unreasonable and must be stricken.

New 5G antennas, including antennas integrated with radios in one small box, generally cannot be enclosed within a shroud or RF-transparent screen because that impedes 5G signal propagation. Any requirements to screen antennas would be technically infeasible and therefore unreasonable. Draft Ordinance §§ 7-4.160(b)(1)(i), 7-4.160(b)(2)(i).

The Draft Policy limits antennas in the right-of-way to seven feet above a pole, though the Director may allow an exception to comply with Public Utilities Commission General Order 95 (requiring, for example, that antennas and associated elements be elevated six feet over electric supply conductors). Draft Ordinance § 7-4.140(b). Instead of leaving this to the Director's discretion, the Draft Ordinance should explicitly incorporate the state regulations, allowing antennas to extend seven feet above a pole plus any required separation distance. The facility height limit of 35 feet near residential property contradicts the height allowance included in the FCC's definition of small cell, which is no less than 50 feet. 47 C.F.R. § 1.6002(l)(1).

**The City Cannot Require Demonstration of Need for Small Cells in the Right-of-Way.**

The Draft Ordinance requires site justification information including coverage maps and a two- to five-year build plan. Draft Ordinance §§ 7-4.20(f)(6), 7-4.20(f)(9), 7-4.20(f)(10). However, this information is not tied to any specific finding for permit approval and is therefore unnecessary. Further, any requirement to justify the need for a right-of-way small cell is preempted by state and federal law.

Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place their telephone equipment in any public right-of-way. Accordingly, telephone corporations such as Verizon Wireless need not demonstrate the need for their facilities, nor can the City deny a right-of-way wireless facility over questions of need. As the result of recent court decisions, San Francisco was obligated to remove the "necessity" requirement from its right of-way wireless ordinance. *See T-Mobile West LLC v. City and County of San Francisco* (2016) 3 Cal.App.5th 334, 342-343, on review by the California Supreme Court (Case No. S238001). Because of the rights granted by Section 7901, the City cannot require information regarding need for right-of-way facilities such as coverage maps.

Requirements to demonstrate the necessity of a small cell are also inconsistent with the Infrastructure Order. The FCC ruled that local regulations prohibit or have the effect of prohibiting service under the Telecommunications Act if they materially inhibit "densifying a wireless network, introducing new services, or otherwise improving service capabilities." Infrastructure Order, ¶ 37. Were the City to deny a qualifying small cell that meets reasonable and objective aesthetic criteria, it would impede "introduction of services or the improvement of existing services," posing an effective prohibition, especially with respect to new 5G small cell technology. *Ibid*. Further, the proposed site justification request is based on an explanation of "a coverage gap," which is a narrow, dated standards for prohibition of service that the FCC disfavored. The FCC disagreed that the Telecommunications Act limits the federal prohibition of service standard to "protecting only against coverage gaps or the like" as determined through a "'coverage gap'-based approach," and the FCC disregarded federal circuit court interpretations relying only on a significant gap in coverage. *Id*., ¶¶ 38, 40.

Because state and federal law preempt the City from requiring any demonstration of need for small cells in the right-of-way, the City cannot require information regarding justification or necessity, including coverage maps and future build plans.

**Requirements for Encroachment Permits Are Excessive or Irrelevant.**

Many submittal requirements for construction and encroachment permits appear to contemplate a larger telecommunications network, not individual small cell facilities, and excessive requirements must be stricken. Draft Ordinance § 7-4.90. For example, Items (e), (f) and (g) include submittals related to overhead and underground facilities (e.g., along a proposed "route"). Items (d)(1) and (d)(2) also reference a "route" as well as "other improvements in the area." These are likely references to backhaul communication lines. Backhaul facilities are typically provided by a different company, not the wireless facility permittee, and they are beyond the scope of a single wireless facility permit. Item (l) requires information on existing facilities an applicant could use, but review of alternatives is inappropriate at the encroachment permit stage. Item (m) implies that a permittee will offer free services to the City, and Items (b), (c) and (o) require descriptions of services provided (including outside City boundaries) and network buildout timelines, all irrelevant to safety and construction factors for an individual encroachment. Item (o) also requires demonstration of need for a right-of-way small cell that is preempted by state and federal law. At a minimum, these items should be eliminated.

We suggest that instead of a separate encroachment permit, that the City issue a single administrative wireless facility permit for small cells in the right-of-way that also authorizes an encroachment. This one-step solution will avoid another issue in the Draft Ordinance: wireless carriers may only apply for construction and encroachment permits after a wireless permit is approved. This sequential permitting contradicts new FCC "Shot Clock" rules that require cities to review and approve all permits required to authorize small cells within a specified timeframe (60 or 90 days), suggesting concurrent processing. Infrastructure Order, ¶ 132-133; 47 C.F.R. § 1.6003(c).

**Other Conflicts with Federal and State Law Should Be Addressed.**

Permit requirements cannot be tied to an increase in radio frequency emissions. Draft Ordinance §§ 7-4.10(definition of "modifications"), 7-4.20(c), 7-4.50(a)(5), 7-4.60(a)(5). The City can seek confirmation that a proposal will comply with FCC exposure guidelines, but the City cannot regulate compliant facilities based on an increase in radio frequency emissions. *See* 47 U.S.C. § 332(c)(7)(B)(iv). References to increase in EMF output should be stricken.

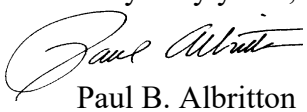
The Draft Ordinance requires an environmental assessment for facilities near historic assets listed in or eligible for the National Register of Historic Places. Draft Ordinance § 7-4.20(f)(8). However, the FCC has exempted qualifying small cells from this requirement. *See* 47 C.F.R. § 1.1312(e)(2). Federal regulations preempt local codes, and an environmental assessment cannot be required for small cells.

Permit terms must be renewed for 10 years, not five years. Draft Ordinance § 7-4.100. Government Code Section 65964(b) presumes that wireless permits terms of less than 10 years are unreasonable absent safety or substantial land use reasons. Compliant facilities pose no safety or land use issues.

**Conclusion**

Numerous Draft Ordinance provisions contradict the FCC's new Infrastructure Order regrading small cells as well as state law granting telephone corporations the right to use the right-of-way. Any subjective criteria must be removed from the Draft Ordinance. Unreasonable and contradictory requirements, including undergrounding of certain equipment, must be revised, and the City must provide reasonable, non-discriminatory and objective criteria for all pole-mounted small cell equipment as well as new poles and ground cabinets. Requirements to show the need for right-of-way facilities must be eliminated. The Council should defer introduction of the Draft Ordinance and direct staff to make needed revisions.

Very truly yours,



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# COUNCIL REPORTS

# COUNCIL MEMBER LAMNIN

# HANDOUT FROM STOPWASTE

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**Topic Brief**
December 2018

# Meal Delivery Kit Packaging

Meal kits are the paint-by-numbers of the cooking world. They include pre-portioned and sometimes partially prepared food ingredients and recipes to prepare home cooked meals. The kits are typically mailed once a week to subscribers, or purchased from grocery stores, packaged in a box with basic instructions on how to turn them into different meals, and ice packs to keep it all cold.

The fast-growing niche market of online meal kit delivery services has continued to expand ever since its introduction in 2012. Revenue is expected to grow from one billion U.S. dollars in 2015, to over ten billion in 2020*. This industry claims to offer the potential to reduce wasted food, yet it also creates a significant environmental impact, in particular from packaging. Some of the problems include:

- Individual packaging for small items like sauces and condiments
- Packaging that includes multiple non-recyclable materials
- Confusing or incorrect recycling instructions
- Heavy freezer packs that are problematic to dispose of and add significant emissions impact from transporting the extra weight

## What Can Be Done?

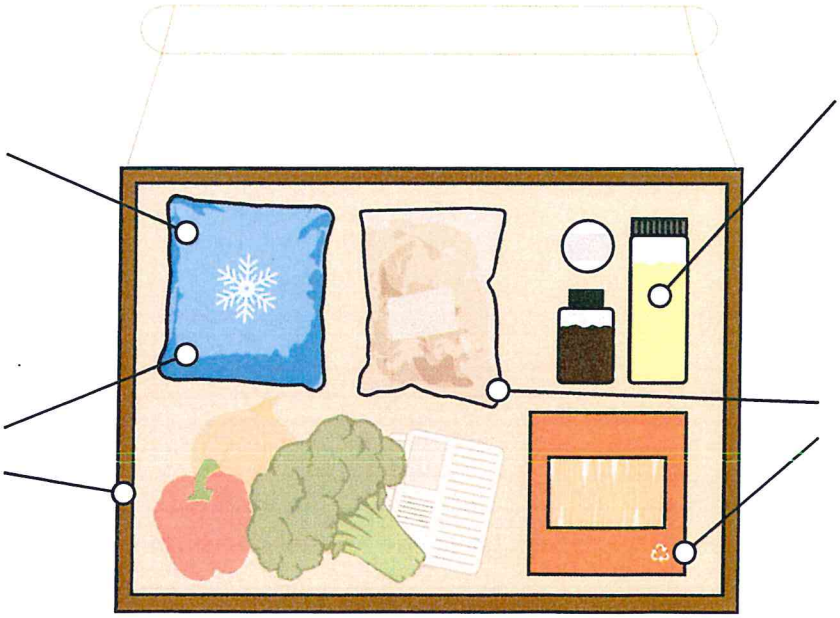
The companies providing these services should take the lead on solutions to the problems stemming from these kits:

**Cold Packs**

Develop alternatives to cold packs that are reusable by the meal-kit provider rather than leaving the consumer with a growing pile of them.

**Take Back and Reuse**

Offer consumers a take-back program for boxes, insulation, freezer-packs, and other materials to ensure they are reused.



**Condiments on Request**

Allow consumers to opt out (or in) for items typically stocked in a kitchen such as salt and oil.

**Labeling**

Provide clear and consistent labeling to the consumer on proper disposal and recycling options. Avoid instructing consumers to recycle materials that are not universally accepted.

* Statista.com/topics/3336/