

Comments and Potential Revisions to Ordinance No. 2022-__ Wireless Telecommunications Facilities

The following summarizes comments on the proposed wireless telecommunications ordinance locational standards received from the public and Verizon Wireless. In addition to summarizing comments that have been received to date, potential revisions to the proposed ordinance are provided for consideration by the Planning Commission where appropriate.

ORDINANCE NO. ____

AN ORDINANCE OF THE LOS ALTOS CITY COUNCIL AMENDING CHAPTER 11.12 AND ADDING CHAPTER 14.82 RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES AND UTILITY INFRASTRUCTURE SETTING NEW LOCATIONAL REQUIREMENTS AND REVISING DEVELOPMENT STANDARDS

THE LOS ALTOS CITY COUNCIL HEREBY FINDS AND ORDAINS:

SECTION 1. FINDINGS

A. Pursuant to the California Constitution, Article XI, section 7; California Government Code § 37100 and other applicable law, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws.

B. Los Altos' public rights-of-way are a uniquely valuable public resource, closely linked with the City's rural character and natural beauty. Los Altos has a population of 30,000 and is suburban community near Silicon Valley. The City has a small town, semi-rural atmosphere – with wooded, quiet low-density single-family homes. The regulation of wireless communication facilities both within the public right-of-way and other locations within the City, is necessary to protect and preserve the aesthetics of the community. The City's General Plan also provides for the undergrounding of new telephone and utility lines, "maintaining the low density, low profile residential character of the community through zoning regulations and design guidelines," and "ensuring compatibility between residential and non-residential development through zoning regulations and design review." The City's concerns for preservation of its community including public safety, visual impact, and aesthetics relate to preserving the residential character of the community by imposing various design standards that relate to location, camouflaging, height, size and spacing of wireless telecommunications facilities. Providing separation between wireless telecommunications facilities and the front of homes along permitted rights-of-way within residential zones serves to reduce the intrusiveness of any new wireless telecommunications facilities.

C. The City is mindful of the need to minimize the potential adverse impacts on the community which includes amongst other things, limiting wireless site visibility and impacts to the City's aesthetic well-being, while balancing same against the need for sufficient cell coverage for emergency needs and complying with both federal and state laws. The regulation as to wireless site visibility is particularly focused on minimizing visibility from residences, encouraging undergrounding of utilities, and limiting the height of such facilities to be consistent with the single-family residences that predominate the housing stock of Los Altos. In keeping with these goals, the City has revised the locational standards to encourage the location of wireless telecommunications facilities within the rights-of-way of Expressways, Arterials, Collectors, and Local Collectors designated on the City's General Plan Circulation Map, while continuing to permit these facilities along local non-residential streets. And, allowing for the permitting wireless telecommunications facilities within the rights-of-way of local residential streets in close proximity to Expressways, Arterials, Collectors, and Local Collectors, as an

alternative to concentrating facilities along any one street right of way. These sound land use locational provisions will serve to ensure the preservation of the local residential areas while also being mindful of avoiding the over saturation of wireless telecommunication facilities on a single roadway.

D. If not adequately regulated, installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of wireless telecommunication facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height of poles and/or towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless telecommunications facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities, all of which has the potential to yield serious negative impacts on the unique quality and character of Los Altos. The reasonably regulated and orderly development of wireless telecommunication facilities in the public-right-of-way is desirable, and unregulated or disorderly development represents a threat to the health, welfare, and safety of the Los Altos community.

E. The City's beauty is an important reason for businesses to locate in the City and for residents to live here. Beautiful views enhance property values and increase the City's tax base. The City's economy, as well as the health and well-being of all who visit, work or live in the City, depends in part on maintaining the City's beauty. The City has been moving towards the undergrounding of various utilities, including the First Street and Lincoln Park Undergrounding Utility projects, and needs to ensure that this effort is not hindered by the addition of numerous wireless telecommunications facilities cabinet, wires, cables, and bulky equipment that visually impede and clutter the City's public rights of way. The City's development and operational standards serve to encourage the reduction of all appurtenant equipment, screening of same, and efforts at undergrounding.

F. The City Council takes legislative notice of the various federal court decisions that have set applicable standards and metrics that the City must meet in the regulation of wireless telecommunications facilities. The City recognizes that there is a long-standing test in California that looks to whether and applicant has shown that there is a "significant gap" in service and an applicant has chosen the "least intrusive means of closing that gap." *MetroPCS, Inc v. City & County of San Francisco*, 400 F.3d 715,733 (9th Cir. 2005) abrogated on other grounds in *T-Mobile S., LLC v. City of Roswell, Georgia*, 574 U.S. 293 (2015). More recently, the FCC adopted an Order in a proceeding focused on small wireless facilities and 5G, which found that local regulations are preempted if those regulations "materially inhibit" the provision of wireless services. The FCC Order goes on to state that local aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are permissible. *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 F.C.C. Rcd. 9088 (2018), *aff'd in part, rev'd in part, City of Portland v United States*, 969 F.3d

1020, 1032 (9th Cir. 2020). That is, reasonable aesthetic requirements by definition do not “materially inhibit” service. The City is mindful of these various evolving legal decisions and FCC Orders in its provision of these revised siting and various development standards.

G. The City acknowledges that there have been significant changes in federal laws that affect local authority over wireless telecommunication facilities and other related infrastructure deployments have occurred. These changes in federal law have occurred concurrently with an ever-increasing demand for the placement of wireless telecommunication facilities within the public rights of way, in order to offer increased coverage in the way of numerous expanding technologies such as: cell phones, video streaming, and on line access to work from home during the COVID -19 pandemic. In connection with the ever increasing demand for expanding technologies, the City is also mindful of the carriers desire to move forward with 5G and the recent published decision in *Environmental Health Trust v. Federal Communications Commission*, 9 Fed. 4th 893, 905 (D.C. Cir. 2021) , wherein that Court noted that the FCC had failed to provide a reasoned explanation for its determination that exposure to RF as implicated by various technological developments that have occurred since 1996, including the ubiquity of wireless devices and Wi-Fi, and the emergence of 5G technology.

H. The City takes legislative notice of the Federal Communications Commission ("FCC") adoption on August 2, 2018, of a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Red. 7705 (rel. Aug. 3, 2018) (“the August 2018 Order”), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities; and that the FCC adopted a Declaratory Ruling and Third Report and Order in September of 2018, --- FCC Red. ---, FCC 18-133 (rel. Sep. 27, 2018) (the "September 2018 Order"), which, among many other things, creates new shorter "shot clocks" for small wireless facilities (as defined in the September 2018 Order), alters existing "shot clock" regulations to require local public agencies to do more in less time.

I. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service, as those terms are used in the Federal Telecommunications Act; rather, the City includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein. Indeed, the City has engaged a land use expert to map the available sites that are permissible for the siting of wireless telecommunication facilities under these siting criteria and he concludes that ~~this~~ [these](#) current locations standards would permit small wireless

telecommunications along more than 101,185 linear feet of roadway right-of-way within Los Altos.

J. The overarching intent of this Ordinance is to make wireless telecommunications reasonably available while preserving the essential rural character of Los Altos. This will be realized by: minimizing the visual and physical effects of wireless telecommunications facilities through appropriate design, siting, screening techniques and location standards; encouraging the installation of Wireless Telecommunications Facilities at locations where other such facilities already exist; and encouraging the installation of such facilities where and in a manner such that potential adverse impacts to Los Altos is minimized.

K. The City adopted an Ordinance regulating wireless telecommunication facilities in August of 2019. This occurred after the City held a study session and several public hearings, at which stakeholders discussed wireless and other infrastructure deployment issues, potential local regulatory responses to the recent changes in federal law in the FCC orders and expressed their design and location preferences, practical and safety concerns, aesthetic concerns, policy views and the essential local values that make Los Altos a uniquely small suburban community. The City's residents in the summer of 2019 called out the numerous concerns at play with aesthetics, and these concerns included numerous objections that were focused on visual blight such as:

- Small cell nodes previously proposed by carriers, AT&T and Verizon, to the City of Los Altos were visually intrusive and unsightly;
- The City should continue to be judicious about and distaste for visual blight;
- The need to eliminate visual blight;
- The need to consider potential visual blight, to mitigate noise, heat, and exposure to EMF, and to protect our enjoyment of our property and its market value;
- These cell towers should be placed in commercial areas, in the medians of major streets, and such. They should not be placed in residential neighborhoods;
- Wireless facilities should be installed in some public/commercial place instead of residential street and so close to people's house. Los Altos neighborhood aesthetic guidelines and property value is one of the main reasons people are willing to stay in this great City.
- Cell towers or small cells are unsightly, noisy and add to the visual blight from the existing electric and telephone lines. While urging that small cells should not be placed in a small residential neighborhood cul de sac street but rather, it would be better to locate same on a major street or in the back of a commercial property;
- Cell towers are ugly and there is no need for extra eye sores;
- The mounting of "small" refrigerator-sized boxes on the side of an existing utility poles is unsightly and adds to visual blight; and
- The cell tower is an eye sore that emits an annoying fan type noise that has a negative impact on the quality of life of the residents who live there or who walk within the community.

These same concerns as to visual blight, aesthetic impairment and noise remain at play today. The visual and aesthetic impacts of the proposed wireless telecommunications facilities is much greater in a residential area versus in a non-residential area such as downtown Los Altos, or Loyola Corners, or along a main arterial or collector streets within Los Altos.

L. On _____, 2022, the City Planning Commission held a duly noticed public hearing to consider an Ordinance to add Chapter 14.82 and to amend Chapter 11.12 at which the Planning Commission received, reviewed, and considered the staff report, written and oral testimony from the public and other information in the record, and recommended to the City Council the adoption of this Ordinance regulating the placement of wireless telecommunication facilities.

M. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, the City includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

N. It is not the purpose or intent of this Ordinance, nor shall it be interpreted or applied to: (1) prohibit or to have the effect of prohibiting wireless telecommunications services; or (2) unreasonably discriminate among providers of functionally equivalent wireless communications services; or (3) regulate the placement, construction or modification of Wireless Telecommunication Facilities on the basis of the environmental effects of radio frequency ("RF") emissions where it is demonstrated that the Wireless Telecommunication Facilities does or will comply with the applicable FCC regulations; or (4) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; or (5) prohibit or effectively prohibit collocations or modifications that the City must approve under state or federal law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

O. The regulations of wireless installations are necessary to protect and preserve the aesthetic character of the community and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible. The City is also mindful of the fact that there are a number of different bands that can be utilized by carriers for wireless telecommunication facilities (including 700 MHz, 800 MHz, 1900 MHz, and 2100 MHz), and that these additional available band options need to be reviewed and considered in the determination of the least intrusive alternatives. As well, there are available a number of alternative means to provide coverage within Los Altos, including but not limited to: the

upgrading of existing telecommunications facilities, the placement of macro towers, the co-location of wireless telecommunications facilities, the provision of micro towers, etc.

SECTION 2. LOCATIONAL CRITERIA

A. Chapter 14.82 of the Los Altos Municipal Code is added to provide as follows:

Chapter 14.82 Standards for the Location of Wireless Telecommunications Facilities

- 14.82.010 Purpose**
- 14.82.020 Definitions**
- 14.82.030 Wireless Telecommunications Facilities Locational Preferences**
- 14.82.040 Requirements for Approval of Less Preferred Locations**
- 14.82.050 Alternative to Wireless Telecommunications Facilities at Preferred and Less Preferred Locations**
- 14.82.060 Additional Locational Preferences**
- 14.82.070 Eligible Facilities Requested Per Municipal Code 12.12.100 and Applications Pursuant to Government Code § 65850.6**

14.82.010 Purpose

The purpose of the following siting criteria is to provide for the location of wireless telecommunications facilities within the City of Los Altos in a manner that minimizes the visual intrusiveness of wireless telecommunications facilities and provides for coverage throughout the City.

14.82.020 Definitions

The definitions called out in Chapter 11.12 shall apply here unless a specific alternative definition is provided.

14.82.030 Wireless Telecommunications Facilities Locational Preferences

A. Wireless Telecommunications Facilities Located within Public Rights-of-Way and Utility Easements

1. Only facilities qualifying for a Section 6409(a) approval and those meeting the definition of a “small wireless facility” shall be permitted within public rights-of-way and public utility easements.
2. The preferred location for a wireless telecommunications facility within a public right-of-way or public utility easement is within the right-of-way of

Comment O-1: Comments from the public have requested that no wireless facilities be permitted within residentially zoned areas.

one of the following roadway types as designated on the Los Altos General Plan Circulation Element as may be amended from time to time.

- (a) Expressways;
 - (b) Arterials;
 - (c) Collectors fronting **non-Residential Zoning Districts** identified in the following subsections of Municipal Code Section 14.04.010.
 - K. Office-Administrative District, OA (OA);
 - L. Office-Administrative District (OA-1 and OA-4.5);
 - O. Commercial Downtown District (CD);
 - P. Commercial Retail Sales District (CRS);
 - Q. Commercial Thoroughfare District (CT);
 - R. Commercial Retail Sales/Office District (CRS/OAD); and
 - V. Loyola Corners Specific Plan Overlay District (LCSPZ).
 - (d) Collectors fronting the Public and Community Facilities District (PCF) (Municipal Code Section 14.04.010 S).
3. Less preferred locations for wireless telecommunications facilities within public rights-of-way and public utility easements include:
- (a) Rights-of-way for all streets fronting the Commercial Neighborhood (CN) District (Municipal Code Section 14.04.010 N).
 - ~~(a)~~(b) Rights-of-way for Local Collectors fronting non-Residential Zoning Districts (Municipal Code Sections 14.04.010 K-L, O-R, V); and
 - ~~(b)~~(c) Public utility easements adjacent to non-Residential Zoning Districts (Municipal Code Sections 14.04.010 K-L, O-R, V) as designated on the City of Los Altos General Plan Circulation Plan (Figure C-1).
 - ~~(e)~~(d) Rights-of-way for Local Streets fronting non-Residential Zoning Districts (Municipal Code Sections 14.04.010 K-L, O-R, V);
 - ~~(d)~~(e) Rights-of-way for Expressways, Arterials, Collectors, and Local Collectors fronting Residential Zoning Districts identified in the following subsections of Municipal Code Section 14.04.010.

Comment O-2: Verizon requested these rights-of-way be considered to be preferred locations. Since preferred locations reflect current standards, if desired, the non-residential CN District, should be considered to be a less preferred location.

1. Single-Family District (R1-10);
2. Single-Family District (R1-H);
3. Single-Family District (R1-20);
4. Single-Family District (R1-40);
5. Single-Story Single-Family Overlay District (R1-S);
6. Multiple-Family District (R3-4.5);
7. Multiple-Family District (R3-5);
8. Multiple-Family District (R3-3);
9. Multiple-Family District (R3.1.8);
10. Multiple-Family District (R3-1);
11. Commercial Downtown/Multiple-Family District (CD/R3);
12. Planned Community (PC); and
13. W. Planned Unit Development (PUD).

~~(e)~~(f) To avoid concentration of wireless telecommunications facilities within the right-of-way of any one street within the City, small wireless telecommunications facilities may also be located within the street rights-of-way for local streets fronting Residential Zoning Districts (Municipal Code Sections 14.04.010 A-J, M, U, W) where the facility would be:

- i. Within 200 feet of the Foothill Expressway right-of-way;
- ii. Within 500 feet of the San Antonio Avenue, El Monte Drive, Magdalena Avenue, or Homestead Road right-of-way;
- iii. Within 300 feet of a Collector or Local Collector right-of-way.

~~(f)~~(g) Rights-of-way for Expressways, Arterials, Collectors, ~~and~~ Local Collectors, and public utilities easements fronting a school in the Public and Community Facilities District (Municipal Code Section 14.04.010 S)

4. Small wireless telecommunications facilities are not permitted within 1,000 feet of another small wireless telecommunications facility.

Comment O-3: Verizon requested rights-of-way for local streets in front of schools be considered to be preferred locations and added into the range of potential sites.

Comment O-4: Proposed ordinance reduces the buffer from 1,500 to 1,000 feet. Verizon requested the 1,000-foot separation between small cells be identified as a preference rather than a requirement.

5. Placement Criteria

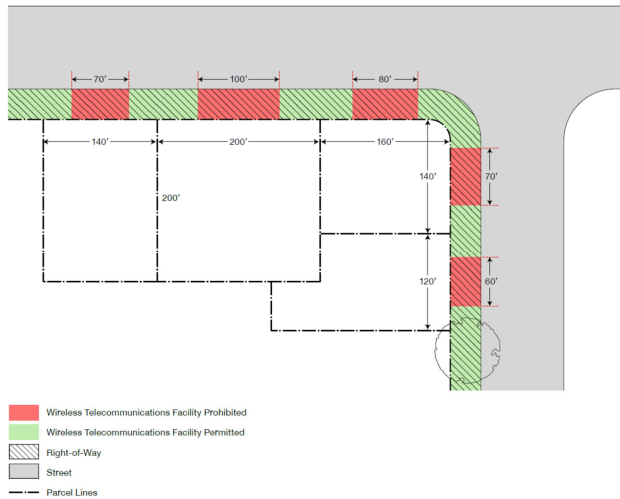
- (a) No portion of any wireless communications facility within a public right-of-way shall overhang a property line.
- (b) Wireless telecommunications facilities and any associated equipment or improvements shall not physically interfere with or impede access to any:
 - 1. Worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
 - 2. Access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;
 - 3. Worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency;
 - 4. Fire hydrant or water valve;
 - 5. Access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or
 - 6. Access to any fire escape.

(c) No wireless telecommunications facility within a roadway right-of-way adjacent to Residential Zoning Districts (Municipal Code Sections 14.04.010 A-J, M, U, W) shall be placed within the central fifty percent (50%) of an immediately adjacent parcel's street frontage unless:-

- 1. No feasible alternative exists within 500 feet of the proposed location.
- 2. Landscaping and/or screening is provided to conceal the facility from view from adjacent dwelling units to the extent feasible.

Comment O-5: Verizon requested facilities within the central 50% of a residential site be identified as a less preferred location. In areas with existing utility poles, a blanket prohibition locating within the central 50% of a parcel's right-of-way might not be feasible. Alternate language is provided.

For corner lots, this standard shall apply to both roadway frontages.



6. Wireless telecommunication facilities within roadway rights-of-way adjacent to non-Residential Zoning Districts (Municipal Code Sections 14.04.010 K-L, O-R, V) should be located on poles that are as close as feasible to shared property lines between two adjacent lots and not directly in front of a business.
7. Wireless telecommunication facilities should be located on poles that are as close as feasible to shared property lines between two adjacent lots and should not be located directly in front of a business.
8. All components of a wireless telecommunications facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to impair the public's use of the right-of-way, or create safety hazards to pedestrians and motorists.
9. Wireless telecommunications facilities shall not be located so as to interfere with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
10. Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.
11. Wireless telecommunication facilities shall be located on poles that are outside of driveways and shall not impair intersection sight lines.

Comment O-6: The suggested revision clarifies but does not change the intent of this provision.

Comment O-7: Verizon requested this reasonable clarification.

Comment O-8: Verizon requested this provision be deleted. The suggested revision clarifies but does not change its intent.

B. Wireless Telecommunications Facilities Located on Properties Outside of Public Rights-of-Way and Public Utility Easements

1. The preferred locations for wireless telecommunications facilities include properties within one of the following Zoning Districts identified in the following subsections of Municipal Code Section 14.04.010.

- K. Office-Administrative District, OA (OA);
- L. Office-Administrative District (OA-1 and OA-4.5);
- O. Commercial Downtown District (CD);
- P. Commercial Retail Sales District (CRS);
- Q. Commercial Thoroughfare District (CT);
- R. Commercial Retail Sales/Office District (CRS/OAD); and
- V. Loyola Corners Specific Plan Overlay District (LCSPZ).

2. Less preferred locations for wireless telecommunications facilities include any City-owned property and properties within one of the following Zoning Districts identified in the following subsections of Municipal Code Section 14.04.010.

- N. Commercial Neighborhood District (CN); and
- S. Public and Community Facilities District (PCF).
- T. Public and Community Facilities/Single-Family District (PCF/R1-10)

3. Location of Wireless Telecommunications Facilities on Properties Outside of Public Rights-of-Way and Public Utility Easements

- (a) No portion of a wireless telecommunications facility may be permitted to encroach into any applicable setback for main structures for the zoning district within which it is located unless the facility is designed per the City's Design Guidelines.
- (b) Wireless telecommunications facilities and any associated equipment or improvements shall not physically interfere with or impede access to any:
 - i. Worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency;

Comment O-9: Verizon requested that the City consider allowing camouflaged facilities on non-residential buildings such as churches within residentially zoned properties.

- ii. Fire hydrant or water valve;
 - iii. Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building; or
 - iv. Fire escape.
- (c) No wireless telecommunications facility shall be located so as to replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required, nor shall any facility be located so as to interfere with require access to parking spaces.

14.82.040 Requirements for Approval of Less Preferred Locations

~~A.~~ Applications that involve a less-preferred location shall be accompanied by clear and convincing written evidence demonstrating the need for approval of the proposed location rather than a more preferred location, including a written description of the facility's intended service area.

~~A.B.~~ Applications that involve less-preferred locations may be approved only if the applicant demonstrates that:

- (1) It does not own any property or facilities within 500 feet from the proposed site that could provide service in lieu of the proposed facility;
- (2) No preferred location exists within 500 feet from the proposed site; or
- (3) Any preferred location within 500 feet from the proposed site would be technically infeasible.

~~B.C.~~ The burden of proof for demonstrating compliance with these above noted conditions shall be on the applicant and must be satisfied with clear and convincing evidence.

~~C.D.~~ Applications that involve a less-preferred location shall be accompanied by clear and convincing written evidence demonstrating the need for approval of the proposed location rather than a more preferred location.

~~D.E.~~ In reviewing a request for a less-preferred location, the City may hire an independent consultant at the applicant's expense to evaluate the applicant's demonstration of need for the proposed less-preferred location.

Comment O-10: Revision is to clarify intent. Verizon asserted that the City is precluded from compelling applicants to demonstrate the need for new small cell facilities in the right-of-way.

14.82.050 **Alternative to Wireless Telecommunications Facilities at Preferred and Less Preferred Locations**

Comment O-11: Verizon requested that all streets in the City, including all local residential streets, be identified as either preferred or less preferred locations and that this section be deleted.

- A. An application may be approved for a small wireless telecommunications facility within the right-of-way of a local residential street that is neither a preferred nor a less preferred location per the requirements of this Chapter only if:
 - (1) A combination of macro and small wireless telecommunications facilities, as well as colocation with existing facilities of other carriers at preferred and less preferred locations within the City would leave a significant gap in coverage;
 - (2) The total number of wireless telecommunications facilities within Residential Zoning Districts (Municipal Code Sections 14.04.010 A-J, M, U, W) is minimized.
- B. The burden of proof for demonstrating the need for one or more small wireless telecommunications facilities within the right-of-way of a local residential street that are neither a preferred nor a less preferred location per the requirements of Section 14.82.030A shall lie with the applicant and shall be included in the application submitted to the City.
- C. Applications pursuant to Section 14.82.050 shall be accompanied by clear and convincing written evidence that demonstrates the applicant’s existing network configuration serving the City of Los Altos cannot be expanded and/or reconfigured or modified to provide adequate service through a combination of new and relocated wireless telecommunications facilities, as well as colocation with existing facilities of other carriers at preferred and less preferred locations; and
- D. In reviewing a permit request for facilities covered by Section 14.82.050, the City shall hire an independent consultant at the applicant’s expense to evaluate the applicant’s current network configuration and demonstration of need to verify that a combination of facilities within the preferred and less preferred locations cannot provide service throughout the City.

14.82.060 **Additional Locational Preferences**

- A. Mid-block locations are preferred to more visible corners and intersections unless:
 - (1) The wireless telecommunications facility is mounted on a traffic signal control pole or streetlight;
 - (2) The wireless telecommunications facility is designed per the City’s Design Guidelines.

- B. The location of a new pole, if permitted, is preferred:
 - (1) Within the parkway strip if one is present.
 - (2) In alignment with existing trees, utility poles, and streetlights.
 - (3) At an equal distance between trees, when possible, with a minimum separation of 15 feet from the tree's trunk or outside of the tree's drip line, whichever is greater, such that no disturbance occurs within the critical root zone of any tree.

14.82.070 Eligible Facilities Requested per Municipal Code Section 12.12.100 and Applications Pursuant to Government Code Section 65850.6

Comment O-12: Verizon asserted that this existing City requirement is preempted and should be deleted.

Eligible facilities requested per Municipal Code Section 12.12.100 and applications pursuant to California Government Code Section 65850.6 (see Municipal Code Section 12.12.110), are permitted within all Zoning Districts and within all public rights-of-way ~~subject to the locational preferences identified in Sections 1.2.1 and 1.2.2, above; and the City's Design Guidelines.~~

SECTION 3. WIRELESS TELECOMMUNICATIONS FACILITIES; PERMIT PROVISIONS

- A. Title 11.12 of the Municipal Code for the City shall be repeal and/or amended to make the following changes to the existing text of Chapter 11.12:

- 1. Section 11.12.040.A is repealed and replaced as follows:

Section 11.12.040A. Permit Required. No wireless telecommunications facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of a permit as required by this Chapter. Such permit must comply with the locational standards set forth in Chapter 14.82 of the City's Municipal Code regulating zoning. In addition, such permit shall be subject to the conditions of Chapter 11.12, along with the City's Design Guidelines calling forth various design and placement standards adopted by the City Council by resolution, and shall be in addition to any other permit required pursuant to the Los Altos Municipal Code.

- 2. Section 11.12.050.A.9 is repealed and replaced as follows:
- 3. Section 11.12.050.A.9. Intentionally omitted
- 4. Section 11.12.050.B.1.c. is repealed and replaced as follows:

Section 11.12. 050.B.1.c. Analysis of an application that involves a less-preferred location as set forth in the locational standards of this Chapter, to determine if the applicant owns any property or facilities within 500 feet of the proposed site that could provide service in lieu of the proposed facility, and whether there is a preferred location within 500 feet and to determine whether any such preferred location is technically feasible.

5. Section 11.12.050.E.2 is repealed and replaced as follows:

Section 11.12.050.E.2 Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in person or through any other means, will not be considered duly filed until a submittal appointment is obtained.

6. Section 11.12.060 is repealed and replaced as follows:

11.12.060 - Conditions of approval for all facilities.

A. In addition to compliance with the requirements of this Chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the City:

1. Before the permittee submits any application for a building permit or other permits required by the Los Altos Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this Chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "approved plans") into the project plans.
2. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.
3. Where feasible, as new technology becomes available, the permittee shall:
 - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Los Altos Municipal Code.
4. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the city of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

Comment O-13: Verizon asserts that a mandatory pre-Application process starts the "Shot Clock," so Verizon Wireless will calculate the clock to start on the day it requests an appointment.

Comment O-14: Verizon objects to this requirement based on an incorrect interpretation that it would prohibit concurrent submittals.

Comment O-15: Verizon asserted that the City cannot compel wireless carriers to dismantle or rebuild any portion of a previously approved facility.

- a. Identity, including the name, address and twenty-four (24) hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.
 - c. Name, address, and telephone number of the property owner if different than the permittee.
5. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the city reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
6. To minimize environmental effects of installation and operations, wireless telecommunications facilities shall comply with the following performance standards:
 - a. Where ground disturbance is required for installation of a wireless telecommunications facility, applicable best management practices (BMPs) shall be implemented to minimize loss of topsoil and site erosion and to reduce diesel particulate (PM₁₀) and PM_{2.5} emissions.
 - b. In the event of an unanticipated discovery of historical, archaeological, or Tribal cultural resources during construction, ground-disturbing activities shall be halted until a City-approved qualified consulting archaeologist assesses the significance of the find according to CEQA Guidelines §15064.5. If any find is determined to be a potential Tribal cultural resource or a unique archaeological resource, the City, consulting archaeologist, and the applicable Tribal authority would determine the appropriate measures to be taken. Any Tribal cultural resources identified would be subject to Tribal mitigation requirements. Any archaeological resources recovered would be subject to scientific analysis, professional museum curation, and documentation according to current professional standards.
 - c. Installations of wireless telecommunications facilities shall meet the most current California Building Code standards required at the time of construction to reduce the potential for substantial adverse effects related to ground shaking.

- d. In the event of an unanticipated discovery during project construction, ground-disturbing activities would be halted until a qualified paleontologist meeting the Society of Vertebrate Paleontology (SVP) Standards determines their significance, and, if significant, supervises their collection for curation. Any fossils collected during site-specific development project-related excavations, and determined to be significant by the qualified paleontologist, shall be prepared to the point of identification and curated into an accredited repository with retrievable storage.
 - e. Noise generated by equipment will not be detrimental to the public health, safety and welfare and shall not exceed the standards set forth in [chapter 6.16](#) of the Municipal Code ~~and Resolution 2019-35~~.
 - f. Where temporary closure of a sidewalk or roadway travel lane would be necessary for installation of a wireless telecommunications facility, preparation and implementation of a Traffic Control Plan approved by the City Engineer shall be required. Should installation of a wireless telecommunications facility occur adjacent to a transit stop and require temporary relocation of the stop, the applicant for such facility shall provide needed improvements for such a temporary transit stop.
6. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
 7. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration. Permittee shall conduct on-site testing to ensure the facility is in compliance with all radio frequency emissions standards adopted by the FCC. Tests shall occur upon commencement of operations, and annually thereafter. Copies of the reports from such testing shall be submitted to the city within thirty (30) days of the completion of testing. The City may retain a consultant to perform testing to verify compliance with current regulatory and operational standards.
 8. If the City Manager determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the City Manager may require the permittee to submit a technically sufficient written report certified by a qualified radio

Comment O-16: The previous Resolution is being rescinded and deletion of this reference is therefore appropriate.

Comment O-17: Verizon asserted that the City cannot legally require annual testing of a facility following installation. The City disagrees.

frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.

9. Annual Certification. Each year on July 1, the permittee shall submit an affidavit which shall list, by location, all facilities it owns within the city by location, and shall certify (1) each such installation remains in use; (2) that such in-use facility remains covered by insurance; and (3) each such installation which is no longer in use. Any facility which is no longer in use shall be removed by permittee within sixty (60) days of delivery of the affidavit.
10. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the Los Altos Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the City Manager in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.
11. Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit city from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.
12. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.
13. A condition setting forth the permit expiration date in accordance with Section 11.12.060 shall be included in the conditions of approval.
7. Section 11.12.080 A. is repealed and replaced as follows:

Section 11.12.080. Findings.

A. Where a wireless telecommunication facility requires a telecom use permit as provided for in this Chapter, the City shall not approve any application unless, all of the following findings are made:

1. The proposed facility complies with the locational and siting standards set forth in Chapter 14.82 and with all applicable building, electrical and fire safety codes.
2. The proposed facility complies with all applicable provisions of Chapter 14.82 and with the Design Guidelines adopted by the City.
3. The proposed facility complies with all applicable building, electrical and fire safety codes.
4. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
5. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
8. Section 11.12.090 Exceptions is repealed in its entirety.
9. Section 11.12.160.B is repealed and replaced as follows:

Section 11.12.160B. After the expiration of the wireless telecommunications permit provided for in Section A, above, a permittee shall apply for a new permit and comply with all the requirements of the City Code then at play.

10. Section 11.12.160. C and D are repealed in their entirety.
11. Section 11.12.180.A is repealed and replaced as follows:

A. Permittee's Removal Obligation. Upon the expiration date of the permit, or upon earlier termination or revocation of the permit, or abandonment of the facility after a period of ninety (90) days, the permittee, owner, or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration. Should the City be required to remove the facility or restore a site within the public right-of-way, the owner/operator of the facility shall reimburse the City for its actual costs.

12. Section 11.02.080.C is repealed and replaced as follows:

Section 11.02.080.C. A copy of any decision on an application made under this section shall be provided to the applicant, and to any party who submitted comments to the City Manager pursuant to notice required by this Chapter. Decisions shall also be posted on the Los Altos website within twenty-four (24) hours of their issuance or as soon as reasonably practicable, in a manner clearly identifying the application to which the decision relates. And, the decision shall also be posted on the site of the proposed wireless telecommunications facility.

SECTION 4. DESIGN STANDARDS

The City Council hereby reviews the prior Design Standards called forth in Resolution No. 2019-35 adopted on August 5, 2019 and repeals same in its entirety and concurrently adopts New Design Guidelines in a separation resolution to regulate the design standards for wireless telecommunication facilities.

SECTION 5. CEQA

The Initial Study prepared for the proposed Wireless Telecommunications Facilities Development Standards and Design Guidelines indicates for each environmental issue it analyzed that environmental impacts would be less than significant or that no impact would occur. There is no substantial evidence, in light of the whole record before the lead agency (the City of Los Altos), that the project may have a significant effect on the environment.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Los Altos City Council hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION 7. AUTHORITY AND EFFECTIVE DATE.

This Ordinance is enacted pursuant to the authority conferred upon the Los Altos City Council by Government Code Section 36934 and will be effective thirty (30) days after second reading.

Anita Enander
Mayor, City of Los Altos

Attest: Andrea Chelemengos
City Clerk

ORDINANCE NO. _____ of the City of Los Altos adopted on _____, 2022 by the following roll call vote of the City Council:

Vote:

Vice Mayor Sally Meadows: _____
Councilmember Lynette Lee Eng: _____
Councilmember Neysa Fligor: _____
Councilmember Jonathan D. Weinberg: _____

In addition to the above, Verizon takes exception to the following existing Municipal Code provisions that are not otherwise addressed in the proposed ordinance.

11.12.050 - Application for permit.

- A. Application Content. All applications for a permit required by this chapter must be made in writing on such form as the city manager prescribes, which shall include the following information, in addition to all other information determined necessary by the city manager:
 - 8. ~~A written description identifying the geographic service area for the subject installation.~~
 - 14. A siting analysis consistent with the provisions of Municipal Section 14.080 or 14.080.050, which ever is applicable ~~identifies a minimum of five other feasible locations within or outside the city by which the applicant could achieve the service goals to be met by the facility, unless the applicant provides compelling technical reasons for fewer than the minimum. The alternative site analysis should include at least one collocation site, if feasible.~~
- C. Notice. Within three business days of submission of an application containing all information required by this chapter and any associated regulations, an applicant shall provide notice, by mail, to all owners and residents of all property, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units, any part of which is located within a one thousand (1,000) foot radius of the location of the applicant's proposed facility. Such notice shall be in the form and include the content specified by the city manager in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant and service provider(s) who will utilize the facility, and include a plain language description of the proposed facility,

Comment O-18: Verizon described this provision as being preempted. The provision is recommended to be included as part of approval of a less preferred location and has been inserted into Section 14.82.040 A.

Comment O-19: Staff concurs with Verizon that this is not needed if a preferred location is proposed.

Comment O-20: Verizon objected to the 1,000 foot notice radius and requests reducing the notice distance to 500 feet for facilities within rights-of-way.

photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the city manager within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two days after mailing of notices.

