



MEMORANDUM

To: Planning Commissioners

From: Lesli Ellis, AICP CEP, Community Development Director

Date: September 11, 2019

Re: **Wireless Communications Facilities Regulations – Addendum**

Since issuing the proposed Wireless Communications Facilities regulations (dated Sept. 4, 2019), staff and consultant have continued to review the draft and to fine tune the specific provisions and the business process for accepting and review applications. We request that Planning Commission consider the following changes along with the Sept. 4 draft to improve and clarify what has been proposed.

Proposed new language is shown with underline. Language proposed for deletion is shown with ~~strikeout~~ (~~strikeout~~).

1. **16.1.1.D, Severability (p. A-2)** - “If any section, clause, provision, or portion of these regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, ~~or by federal or state statute or regulation~~, the remainder of the regulations in this chapter shall not be affected thereby and is hereby declared to be necessary for the public health, safety, and welfare.” *(Note: Suggest removing this language to prevent confusion about conflicts between state and federal law, since we are following state law.)*
2. **16.1.4.B.8, Residential Buildings (p. A-7)** - “WCFs, excluding small cell facilities, shall not be placed on buildings used principally for residential purposes.” *(Note: Suggest adding the underlined language, because small cells are a use by right in all zone districts under state law and while it is unlikely they will be proposed for attachments to residential structures, we may not exclude them from residential structures.)*
3. **16.1.6.A.2, Application and Completeness (p. A-11)** - “An application shall be made on forms provided by the county, in compliance with Section 12.1.A of this Code and in accordance with Table 16.B, depending on the type of facility and height. All items listed in Section 16.1.8 must be correctly and completely included in the submission. The director will determine if the application is complete. If the application is not complete, the applicant will be asked to provide the missing information before processing will resume. ~~before the director is able to determine it is complete accept it and before processing begins. Submissions which do not contain all of the information will not be accepted.~~ No application submittal will be accepted by mail without prior approval from the director. *(Note: Suggest clarifying the complete application requirements.)*
4. **16.1.6.C, Review Procedures for Eligible Facilities Requests (p. A-14)** - “This section applies to any eligible facilities requests for collocation on, or modification to an existing

tower or base station that does not substantially change the physical dimensions of such facility ~~or change the land use classification of the structure.~~" (Note: Suggest removing this language as it is likely contrary to federal law.)

5. **16.1.6.C.4, Tolling of the Timeframe for Review. (p. A-14) Section a** - "To toll the timeframe for ~~corrections incompleteness~~ in the application, the county must provide written notice to the applicant within thirty (30) days..." **Section b:** ~~"the timeframe may be reset pursuant to FCC guidelines."~~ (Note: Suggest first change to be consistent with 16.1.6.A.2 above and second change to be consistent with FCC rules.)
6. **16.1.7.C, Application Requirements, Section 8: Radio Frequency Emissions Letter (p. A-16)** – "A letter certifying all WCFs shall comply with federal standards for radio frequency emissions and that they ~~shall be monitored~~ to ensure ongoing compliance." (Note: If we are to include such language, consider something more specific. However, requiring ongoing or even periodic monitoring is likely preempted by federal law).
7. **16.1.8., Definitions – MICROCELL (p. A-19)** - A small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than 11 inches in length. ~~A low power WCF used to provide increased capacity in high telecommunication demand areas or provide in fill coverage in areas of weak reception, including a separate transmitting and receiving station serving the facility.~~ (Note: Suggest replacing old definition with the state law definition.)

Also for consideration:

8. **16.1.3.D, Abandonment and Removal. (p. 4)** "...If such WCF is not removed within said sixty (60) days, the county may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. [Additionally, the county, may not approve a new WCF application until the applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the county.] Notwithstanding the foregoing, nothing in this subsection shall limit an applicant for applying for an eligible facilities request on an existing eligible support structure." (Note: For the language in parenthesis above, County may not have grounds to deny a permit on this basis and may want to consider removing or modifying the language, per consultant guidance.)