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January 11, 2019

VIA EMAIL

Mayor Terry Tornek
Vice Mayor John Kennedy
Councilmembers Tyron Hampton,
Margaret McAustin, Gene Masuda,
Victor Gordo, Steve Madison and Andy Wilson
City Council
City of Pasadena
100 North Garfield Avenue
Pasadena, California 91101

Re: Proposed Amendments to Municipal Code Chapter 12.22
Telecommunication Facilities in the Public Right-of-Way
Council Agenda Item 13, January 14, 2018

Dear Mayor Tornek, Vice Mayor Kennedy and Councilmembers:

We write again on behalf of Verizon Wireless regarding proposed amendments to Chapter 12.22 of the Pasadena Municipal Code (the "Proposed Amendments") addressing wireless facilities in the right-of-way. While Verizon Wireless appreciates efforts to expedite permitting of small cell facilities, the Proposed Amendments do not fully comply with a recent order of the Federal Communications Commission (the "FCC") regarding small cell approval criteria (the "Infrastructure Order").¹ As described in our prior correspondence, the FCC requires cities to evaluate small cell applications under reasonable, non-discriminatory and objective criteria. Infrastructure Order, ¶ 86. The Proposed Amendments do not fully eliminate conflicts with the Infrastructure Order, and they leave certain unlawful code provisions unchanged. The Council should defer adoption and direct staff to revise the Proposed Amendments.

The Proposed Amendments forgive noticing requirements for Tier 1 small cells (under one cubic foot) and reduce them for Tier 2 (between one and five cubic feet); however, any requirements for public notice and comment windows are inappropriate given the objective review that the FCC requires for small cells. Proposed Amendments § 12.22.080(A). Under objective standards, either a facility complies, or it does not. There is no room for opinion or subjectivity that could be used to deny otherwise-

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018)

Modification
Sec 7
new language
added to
(B) no
wireless height
lowered to
21'
—

compliant facilities. Objective review is administrative in nature, and any attempt to sway the Director's decision must be disregarded. Simply put, there is no benefit to public input. Instead of scaling notice requirements based on a facility's size, public notice should not be required for qualifying small cells.

With respect to any appeals to the City Manager, the review must be based on reasonable, objective criteria. Proposed Amendments § 12.22.100. Considering this narrow scope, there is no reason to consider new or irrelevant information submitted by the public. The Proposed Amendments should be revised so the appeal record is limited to materials that were before the Director, with the City Manager confirming the Director's conclusions.

We note that limiting the number of facilities batched under one application (e.g., to five facilities) is inconsistent with new FCC Shot Clock rules. Proposed Amendments § 12.22.050(D). The FCC does not limit the number of small cells or the specific volume of facilities that can be batched under one application. 47 C.F.R. § 1.6003(c)(2). Batch limitations should be stricken.

Though certain problematic provisions of the existing code are not addressed by the Proposed Amendments, we emphasize that they continue to contradict state and federal law. As we explained previously, the required justification and coverage gap study violates California Public Utilities Code Section 7901 granting telephone corporations the right to place their equipment in the right-of-way. Code § 12.22.070(A). It also contradicts the Infrastructure Order, as the FCC disagreed that the federal prohibition of service standard is limited to "protecting only against coverage gaps or the like" as determined through "coverage gap-based approaches." Infrastructure Order, ¶ 38, 40. A facility meeting the FCC's definition of small cell must be approved if it satisfies reasonable, non-discriminatory and objective standards, and justifying the need for a small cell is irrelevant.

The Code's ban on new poles also contradicts Section 7901 that grants telephone corporations the right to erect new poles in the right-of-way. Code § 12.22.120(A). Further, the Infrastructure Order considers new poles for small cells, which are addressed in newly-codified Shot Clock rules. *See* 47 C.F.R. § 1.6003(c)(1)(iii). Instead of forbidding new poles, the City must provide reasonable and objective criteria for their design.

The Proposed Amendments do not go far enough to address the FCC's directions in the Infrastructure Order, and they do not tackle unlawful existing Code requirements. The Council should decline adoption of the Proposed Amendments and direct staff to make needed revisions.

Very truly yours,
DRAFT
Paul B. Albritton

Mayor and City Council
City of Pasadena
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cc: Michele Bagneris, Esq.
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