



PHYSICIANS FOR SAFE TECHNOLOGY

Key Elements of Strong Local Ordinances- update 8/31/20

(Combination of ordinances passed and suggested. Please consult an attorney for questions)

- **FCC Clause:** Have a clause voiding the agreement or requiring its modification in the event of a regulatory change (overturning the FCC Order), according to a report by [Next Century Cities](#)
- **Conditional Use Permit:** Maintain that all wireless facilities both small cells and cell towers require a Conditional Use Permit by the planning department followed by an encroachment permit. (remove Minor wireless permit section 18.41.050 and add all wireless communications facilities to section 18.41.060) which is reopened every 3 to 5 years- [Sonoma City, California](#)
- **Significant Gap in coverage:** Maintain requirement for significant gap in coverage to be identified for approval of both small cells and cell towers. **Note:** Telecom still needs to show this although they state they do not
- **Proof of NEPA Review:** Provide information showing this installation has received any required review (e.g., environmental assessment and review) by the FCC pursuant to the National Environmental Policy Act (NEPA), or is exempt from such requirements. If exempt, please state what the basis is for the exemption and provide proof, including supporting documents that establish that this installation meets such exemption.
- **Least Intrusive Methods:** Maintain requirement for the least intrusive methods to fill the gap for both small cells and cell towers. 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. **Note:** Telecom still needs to follow this. (Old-Palos Verdes)
- **Americans with Disabilities Act (ADA) Compliance.** All facilities shall be in compliance with the Americans with Disabilities Act (ADA). (New Palos Verdes)
- **Setbacks:**
 - **1500 Foot Setback** from other small cell installations: Every effort shall be made to locate small cell installations no less than 1500 feet away from the Permittee's or any Lessee's nearest other small cell installation, or within _____ feet of any permanent residential dwelling. (ART Ordinance) Setbacks Between Small

Cells: Calabasas, Petaluma, Fairfax, Mill Valley, and San Ramon (all California) require 1,500 feet between SCFs. (Boulder, CO Recommendation-[Boulder Colorado Small Cell Ordinance Legal Opinion Policy Report](#)). ([Los Altos Ordinance](#))

- **Setback From Roads or Property Lines:** No new tower shall be constructed without a setback from the tower's base of at least 1.5 times the tower height to a public or private road and at least 2.5 times the tower height to the nearest property line. ([Scenic America Model](#))
- **Setbacks from Schools:** 500-1500 foot setback from schools. ([Palo Alto Unified School District Cell Tower Policy](#)) ([Palo Alto 300 foot setback](#))
- **500 (to 1500) Meter setback recommended around schools, hospitals and homes.** The setback for Calabasas, CA is 1,000 feet (Boulder, CO Report), 500 ft Setback from residences (Petaluma). Engineering Article - "Limiting liability with positioning to minimize negative health effects of cellular phone towers." (2019) Pearce M. Environmental Research, Nov 2019; <https://www.sciencedirect.com/science/article/abs/pii/S0013935119306425>
- **Location Prohibition, Disfavored or Favored Locations**
 - **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are **disfavored** and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are **favored**. i.e. commercial zoning areas, industrial zoning areas. (Boulder, CO Report [Boulder Colorado Small Cell Ordinance Legal Opinion Policy Report](#)). ([Los Altos Ordinance](#))
 - **Disfavored Location:** Every effort should be made to avoid placement of small cell installations in close proximity to residences, particularly from sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) ([Los Altos Ordinance](#))
 - **Prohibited Zones for Small Cells:** Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Mill Valley) ([Los Altos Ordinance](#))
 - **Drip line of tree/heritage trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.... (Old-Palos Verdes)- 15ft in Los Altos ([Los Altos Ordinance](#))
 - **Order of Preference – Location:** The order of preference for the location of small cell installations in the Town, from most preferred to least preferred, is: 1. Industrial zone
2. Commercial zone
3. Mixed commercial and residential zone 4. Residential zone (ART Ordinance and New Palos Verdes). ([Los Altos Ordinance](#))
 - **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

- **Require Mock-up:** Require full-size mock-up of proposed SCFs and other pertinent information in order to adequately consider the same potential impacts. It also may want to adopt Larkspur’s approach to require construction drawings, a site survey, and photo simulations. (Boulder, CO Report)
- **Notification of Property Owners:**
 - **Public notifications** of planning commission hearings; Either in newspaper, website no less than 14 days prior to the date of the hearing.
 - **Notification of all property owners** within 500 (or other) feet of the proposed installation within X timeframe
- **Speculative Equipment Prohibited.** The city finds that the practice of “pre- approving” wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public’s best interest. The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility (Old-Palos Verdes) This includes surveillance equipment for privacy and security protections.
- **Transfer of Permit:** The **permittee shall not transfer the permit** to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)
- **Authorization from Property Owner:** If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner’s property. (Palos Verdes)
- **Community Meeting:** The applicant would be **required to hold a community meeting** at least two weeks prior to the planning commission hearing on the use permit. (San Anselmo)
- **Noise**
 - **Noise Complaints:** If a nearby property owner registers a noise complaint, the city shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose conditions on the project to achieve said objective. (Old- Palos Verdes)
 - **Noise Restrictions:** Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

- At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. ([Los Altos Ordinance](#))
- **Insurance:** In order to protect the city from liability (and bankruptcy) from harm to humans or the environment cities have a legitimate right to require proper health protective insurance on their master license or emergency ordinance. Without proper city insurance **that does not have a pollution exclusion** the cities can be sued for damages by individuals. **All of the major insurance companies including Lloyds of London since 2011 exclude RF radiation or electromagnetic frequencies from coverage- it is an exclusion.** There are a few companies who can cover pollution liability and this should be required. Scarsdale, New York has apparently included a provision in their ordinance to require pollution free exclusion in their policies. Cities also have the right to regulate the operation of the WTF facility.

Note: The risk manager for the city needs to require a **copy** of the insurance policy from both the operator and installer of the telecom equipment that includes the **Board of Directors and Assets of the Corporation** to be clear about which entity you are signing the agreement with. Telecom companies can offer indemnity insurance from another entity which can potentially be a shell company with few or no assets and thus leave cities bare with regards to insurance coverage or adequate defense of a lawsuit. After signing the master license agreement the telecom company requesting the permit would be required to produce the certificate of liability along with the actual policy and insurance clause that shows coverage **without a pollution exclusion**. A one page list of the certificate of liability is not enough to protect a city. Careful scrutiny and legal input is necessary in reviewing insurance.

See **Interplay of Insurance, Indemnity and Limits of Liability** by Safety National.
<https://www.safetynational.com/conferencechronicles/interplay-of-insurance-indemnity-and-limits-of-liability/>

“Pollutant” Exclusions in Property Insurance Policies, Part 3. June 19, 2014.
<https://www.propertyinsurancecoveragelaw.com/2014/06/articles/insurance/pollutant-exclusions-in-property-insurance-policies-part-3/>

Electromagnetic Field Insurance Policy Exclusion Are the Standard- Includes names of insurance companies who do cover pollution liability.
<https://ecfsapi.fcc.gov/file/10906001218058/Electromagnetic%20Field%20Insurance%20Policy%20Exclusions.pdf>

- **General Liability Insurance \$ 2-5 million without a pollution exclusion clause to protect the City:** The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an **insurance policy or policies of commercial general liability insurance**, with minimum limits of **Two Million Dollars (\$2,000,000)** for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage without a pollution exclusion. The insurance must name the city

and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium...

- **Endangerment, Interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.
- **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the Town an affidavit which shall list all active small cell wireless installations it owns within the Town by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the Town as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART Ordinance)
- **Radiofrequency Testing and Monitoring**
 - **Radiofrequency: RF Compliance Report and RF Data Request Sheet (Attachment A):** Require all applicants to submit an **RF Compliance Report** signed by a registered Professional Engineer, together with a completed form **RF Data Request Sheet (Attachment A)** that provides technical information sufficient for power density verification. The **RF Compliance Report** should provide power density calculations in microwatts per centimeter squared (uW/cm²) as well as percent of FCC standard; and power density calculations should be provided in tabular form showing power density at 10' increments out to a distance of 1000 feet at ground level (6') and to second-story building level (16'). [Attachment A - RF Data Request Sheet](#)
 - **Independent Expert:** The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old- Palos Verdes)
 - **Random Testing for RF Compliance:** The Town shall have the right to employ a qualified RF engineer to conduct an annual random and unannounced test of the Permittee's small cell wireless installations located within the Town to certify their compliance with all FCC radio-frequency emission limits as they pertain to

exposure to the general public. The reasonable cost of such tests shall be paid by the Permittee. (ART Ordinance)

- **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation or installations owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure guidelines as they pertain to the general public, the Town shall notify the Permittee and all residents living within 1500 feet of the small cell installation(s) of the violation, and the Permittee shall have forty-eight (48) hours to bring the small cell installation(s) into compliance. Failure to bring the small cell installation(s) into compliance shall result in the forfeiture of all or part of the Compliance Bond, and the Town shall have the right to require the removal of such installation(s), as the Town in its sole discretion may determine is in the public interest. (ART Ordinance)
- **Non- acceptance of Applications:** Where such annual re-certification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for small cell wireless installations will be accepted by the Town until such time as the annual re-certification has been submitted and all fees and fines paid. (ART ordinance)
- **Aesthetics and Undergrounding:** All equipment not to be installed on or inside the pole must be located underground, flush to the ground, within three (3) feet of the utility pole. Each installation is to have its own dedicated power source to be installed and metered separately.
- **Aesthetic Requirements:** "Law firm Baller Stokes & Lide highlighted the following aesthetic considerations that local governments can consider: "Size of antennas, equipment boxes, and cabling;
 - Painting of attachments to match mounting structures;
 - Use of shrouds, stealth techniques, or other camouflage;
 - Flush-mounting of antennas;
 - Placement of equipment in the pole base rather than on the outside of the pole;
 - Consistency with the character of historic neighborhoods;
 - Minimum spacing between attachments;" and
 - Aesthetic standards for residential neighborhoods, including "any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations." (Boulder, CO Report)

Reference:

Radiofrequency (RF) Radiation Awareness Guide for the Construction Industry. Useful information clearly written. https://www.cpwr.com/wp-content/uploads/publications/RF_Radiation_Awareness_Program_Guide_8_2016.pdf