

RESOLUTION NO. 090-2021

A RESOLUTION OF THE CITY OF BURLINGAME ESTABLISHING DESIGN AND LOCATION STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY AND UTILITY EASEMENTS, AND ON PUBLIC AND PRIVATE LAND; AND ESTABLISHING STANDARD PERMIT APPROVAL CONDITIONS (CEQA DETERMINATION: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTIONS 15378, 15061(B)(3), 15302, 15303, AND 15304)

WHEREAS, Chapter 25.77 of the City's Municipal Code governs the permitting, installation, and regulation of wireless facilities on private land within Burlingame;

WHEREAS, Chapter 12.11 of the City's Municipal Code governs the permitting, installation, and regulation of wireless facilities in the City's public rights-of-way and utility easements;

WHEREAS, Chapter 25.77 and Chapter 12.11 authorize the City Council to establish design and location standards and standard permit approval conditions applicable to wireless installations on private land and in the public rights-of-way, respectively;

WHEREAS, on June 21, 2021 the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the design and location standards and standard permit approval conditions; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES RESOLVE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The recitals above are each incorporated by reference and adopted as findings of the City Council.
2. DEFINITIONS. The definitions set forth in Section 12.11.020 and Section 25.77.020 of the Municipal Code are incorporated by reference into this Resolution.
3. DESIGN AND LOCATION STANDARDS FOR WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY AND UTILITY EASEMENTS.
 - 3.1. ALL FACILITIES. The following design and location standards shall apply to all wireless facilities in the public rights-of-way and utility easements:
 - A. Visual Criteria.
 1. Generally. Wireless facilities should be designed using the least visible means technically feasible and be aesthetically compatible with the surrounding area and structures (e.g., color, materials, size, and scale).
 2. Stealthing/Concealment. The wireless facility, including pole-mounted equipment, and cables should be camouflaged or concealed to create a stealth facility by mimicking or blending the facility with surrounding materials and colors of the support

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structure on which the facility is installed, the surrounding environment and adjacent uses with regard to appearance, size and location. Concealment elements include, but are not limited to, the following:

- a. Radio frequency (RF) transparent screening or shrouds;
 - b. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, conduit and cabling;
 - c. Placing cables and wires inside the pole or beneath conduit of the smallest size technically feasible;
 - d. Minimizing the size of the facility; and
 - e. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.
3. **Materials.** The materials and paint used shall be non-reflective, non-flammable, and of durable quality. To the extent technically feasible, all visible wireless facilities, including shrouds, cabinets and visible equipment, shall be constructed from or coated with graffiti-resistant materials.

B. Location.

1. **Location Preference Order.** In determining the location of proposed wireless facilities in public rights-of-way and utility easements, applicants should use best efforts to review and consider locations in the preference order outlined herein. If applicable, the applicant shall include an explanation of the reason that the proposed facilities cannot be deployed at a higher-preference location. The location preference order is as follows by descending priority:
 - a. Within non-residential zoning districts other than the Burlingame Downtown Districts or the Broadway Commercial District.
 - b. Within public right-of-way adjacent to public parks and open spaces, or within public utility easements within public parks and open spaces.
 - c. Within the Burlingame Downtown Districts and Broadway Commercial District, except as noted in paragraph 2.
 - d. On arterial streets within single-unit, two-unit and multi-unit residential zoning districts.
 - e. On non-arterial streets within single-unit, two-unit and multi-unit residential zoning districts.

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- f. Within public utility easements within single-unit, two-unit and multi-unit residential zoning districts.
 - g. Adjacent to real property occupied by schools, including private schools, and licensed daycare centers, as they are defined by Chapter 25.08 of the Burlingame Municipal Code.
- 2. Prohibited Zones. Installations on Burlingame Avenue, within the Burlingame Avenue Commercial District, and on Broadway, within the Broadway Commercial District, are prohibited.
- 3. A small wireless facility should be no closer than 300 feet away, radially, from another small wireless facility.
- 4. The City has a preference for the use of existing infrastructure locations, with the following exceptions:
 - a. Traffic signal poles and associated equipment cabinets.
 - b. Utility poles providing a power source for a traffic signal.
 - c. Street lights used for seasonal art or informational display (e.g., banners).
 - d. Street lights with pole-top luminaires (e.g., "acorn" light fixtures) and decorative light poles.
- 5. Facilities should be located near shared property lines between two adjacent lots, whenever technically feasible, or along a secondary street frontage.
- 6. Facilities should not be located in front of business windows, primary walkways, primary entrances or exits, or in such a way that it would impede access to the building.
- 7. New poles should be located in the planting strip, located between the sidewalk and street, whenever technically feasible and in alignment with existing trees, utility poles, and streetlights.
- 8. New poles should be an approximately equal distance between trees when technically feasible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- 9. New or replacement poles shall be a minimum of 18 inches from the face of the curb, however shall not impede the use.
- 10. Facilities should not be installed such that the facility damages existing trees. Approval may be conditioned on tree assessment

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results provided by a certified arborist. If pruning is required for the installation, a separate permit must be obtained.

11. Curb Setback Requirements. New or replacement poles shall be a minimum of 18 inches from the face of the curb, however shall not impede the use of the sidewalk.
- C. Number and Mounting. Only one wireless facility is permitted per structure. Side-mounted antennas shall not be permitted.
- D. Accessory Equipment. Accessory equipment, including radio remote units (RRUs), shall be placed in a shroud with the antenna or in a shroud in a vertical arrangement on the pole. If such placement of equipment is not feasible, undergrounding equipment is preferred. Vaults and pull boxes shall be installed flush to grade. Ground-mounted equipment is prohibited unless required for technical reasons. If required, ground-mounted equipment shall incorporate camouflaging and shrouding to match the colors, appearance, and materials of existing facilities and screen facilities from public view as much as is technically feasible. Further, if ground-mounted equipment is required, it must be enclosed in cabinets, sized only for the needed equipment and camouflaged using paint that matches the surrounding environment.
- E. Prohibition of Generators. Generators (above or below the ground) are prohibited in the public right-of-way.
- F. Electric Service. Facilities should use flat-rate electric service when it would eliminate the need for a meter. Where meters are required, facilities should use smart meters or the narrowest electric meter and disconnect available. The meter and disconnect should be shrouded unless these cannot be shrouded for safety or accessibility reasons or shrouding is not allowed by the electrical provider. Ground-mounted electrical meters are prohibited unless required by the electrical provider.
- G. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.
- H. Safety. All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.
- I. Noise. Wireless facilities and all accessory equipment and transmission equipment must comply with Burlingame Municipal Code noise regulations, as may be amended from time to time.

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- J. Lighting. No facility shall be illuminated unless specially required by the Federal Aviation Administration (FAA) or other government agency. Any required lighting shall be shielded to eliminate, to the maximum extent feasible, impacts on the surrounding area property.
 - K. Signs. No facility may display any signage or advertisement unless it is expressly allowed by the City in a written approval, recommended under FCC regulations, or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
 - L. Landscaping. In addition to any landscaping used for concealment or screening purposes, the applicant shall propose and install additional landscaping to replace any existing landscaping displaced during construction or installation of the applicant's facility in the right-of-way. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.
- 3.2. POLE-MOUNTED FACILITIES. In addition to the standards set forth in Section 3.1 of this Resolution, the design standards for pole-mounted facilities are as follows:
- A. Poles, Generally. For facilities installed on any pole:
 - 1. Antennas and Equipment. Antennas, radio remote units (RRUs) and associated equipment shall be top-mounted in a shroud. Side-mounted antennas shall not be permitted. RRUs and other equipment attached to the side of the pole are discouraged, but if they are required due to technical reasons, should use the smallest volume technically feasible and be stacked vertically and close together with minimal distance from the pole.
 - 2. Dimensions. Antennas shall be of the smallest size technically feasible, but in no case more than five (5) cubic feet in volume. Pole-top wireless facilities, including the shroud, shall be no more than 48 inches in height and 15 inches in diameter.
 - 3. Cables and Wiring. All cables and wiring shall be within conduit within the structure, or if not feasible, within conduit on the exterior of the structure. The exterior conduit, conduit attachments, cables, wires and other connectors shall be a color that matches the pole, of the smallest size technically feasible, and concealed from public view.
 - 4. General Orders. All installations shall fully comply with the California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95 ("GO 95"). None of the design standards are meant to conflict with or cause a violation of GO 95, including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, the Standards can be

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adjusted at the City's discretion to ensure compliance with CPUC rules on safety.

B. Utility Poles. In addition to complying with the standards above, installations on utility poles must comply with the following:

1. Equipment shall be completely contained within the equipment shroud. Equipment shroud and lines shall be painted, treated or finished to match existing utility pole and line aesthetics. Utility line installations shall be colored to a non-reflective color.
2. The top of the antenna shall be no higher than 48 inches above the minimum separation from supply lines required by GO 95, exclusive of the required antenna mounting bracket.
3. Only one equipment shroud, containing all required accessory equipment shall be installed per pole. Outer edge of equipment shroud shall project no more than 18 inches off the pole circumference and measure no more than nine (9) cubic feet in volume. The volume limitation may be waived by the reviewing authority if applicant demonstrates that it is necessary for passive cooling.
4. All antennas shall be concealed in a shroud or other manner. Antenna shroud shall not exceed 15 inches in diameter and measure no more than five (5) cubic feet in size. The shroud shall be no more than 48 inches tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.

3.3. EXISTING AND REPLACEMENT STREETLIGHT POLES. If an applicant proposes to use an existing or a replacement streetlight pole to accommodate the facility, it must comply with the following:

- A. **Placement.** The base of the replacement pole shall be a minimum of 18 inches away from the face of the curb, unless otherwise directed by the City in order to comply with ADA requirements. Further, a replacement pole shall be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.
- B. **Design.** Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced to the greatest extent feasible.
- C. **Stealth.** Facilities should be stealth.
- D. **Equipment** shall be painted, treated or finished to match existing streetlight pole aesthetics and materials in finish and color.

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- E. The antenna shall be mounted at the top of the streetlight pole where the arm extends from the pole where feasible. The top of the antenna shall be no higher than 48 inches above the top of the existing pole.
 - F. All antennas shall be concealed in a shroud or other manner. Antenna shroud shall not exceed 15 inches in diameter and measure no more than five (5) cubic feet in size. The shroud shall be no more than 48 inches tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
 - G. All cables, wires, and other connectors shall be hidden within the base and shaft of the streetlight pole.
- 3.4. NEW POLES. New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these standards than installations on existing structures near the project site. In addition to meeting these requirements, if an applicant proposes a new pole to accommodate the facility, it must comply with the following:
- A. Installations on New Poles. Antennas shall be pole top-mounted in a shroud, and cables and wiring shall be contained within the new pole. The antennas and equipment on a new pole shall be of a stealth design.
 - B. When technically feasible, all antennas and associated equipment shall fit within the diameter of the pole with no exterior wires or conduit. If all antennas and equipment cannot fit within the pole for technical reasons, then the installation shall be subject to the standards in the sections above.
 - C. Pole Height. Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 35 feet. Legally required lightning arresters and beacons should be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of antenna or top of highest pole attachment, whichever is greater.
 - D. Pole Diameter. New poles shall have a maximum outside diameter of nine (9) inches and shall be tapered toward the top. The poles shall be designed so that cables and wiring can be contained inside the poles.
 - E. Pole material and finishes shall match the existing materials of the City standard streetlight poles or match aesthetics and materials of existing decorative poles.
 - F. If existing poles (other than wood poles) are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
 - G. New wood poles are prohibited.

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4. DESIGN AND LOCATION STANDARDS FOR WIRELESS FACILITIES ON PUBLIC AND PRIVATE LAND.

4.1. DESIGN STANDARDS. In addition to the standards set forth in Section 3.1 of this Resolution, the following design standards shall apply to all wireless facilities on public and private land:

- A. **Stealth/Concealment.** All wireless facilities shall be stealth. Wireless facilities shall be designed, located and constructed in a manner that minimizes visual and auditory impacts of the facilities. Wireless facilities shall blend into the surrounding environment and/or shall be architecturally integrated into a structure, considering the color, design and character of the surrounding context (e.g., public art, clock towers, flagpoles, trees/vegetation, rocks, water tank, existing office/industrial buildings, and church steeples). Specifically, the wireless facilities shall comply, to the greatest extent feasible, with the following:
1. Wireless facilities shall be concealed, screened or camouflaged by the surrounding topography, vegetation, buildings, stealthing techniques, or other setting.
 2. Wireless facilities shall be proportional in size relative to surrounding and supporting structures and ability for collocation by other providers.
 3. Roof-mounted facilities shall be concealed and be set back at least one foot from the edge of the roof for every one foot of antenna height and shall not exceed ten (10) feet in height above the roof surface or top of parapet.
 4. Wall-mounted facilities shall be compatible in scale and design with the building, shall be flush mounted, i.e., shall not extend more than twenty-four (24) inches from the face of the building, and shall be painted and/or textured to match the wall of the building. All cables and brackets, wires, shall also be hidden.
 5. To the extent technically feasible, all visible wireless facilities, including shrouds, cabinets, and visible equipment, shall be constructed from or coated with graffiti-resistant materials.
 6. All concealing, screening, painting, camouflaging and/or use of stealth designs and stealth structures should be consistent with Section 25.77.010 (Purpose) including, but not limited to, promoting wholesome, attractive, harmonious and economic use of property, building construction, civic service, activities and operations in conformity with and preserving the overall aesthetics of City neighborhoods including its character and its century old architectural traditions.

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- B. Where applicable, appropriate landscaping should be installed in and around wireless facilities.
 - C. Any exterior lighting on the wireless facilities shall have a manual on/off switch and be contained on-site.
 - D. Ground equipment associated with wireless facilities shall be concealed, screened, camouflaged or hidden using stealth design, stealth structures, underground installation or landscaping and fencing.
 - E. Signage in, on or near any wireless facilities shall be prohibited with the exception of warning and informational signs as required by state and federal law, which shall be designed with minimal aesthetic impact.
 - F. Support wires for structures are discouraged.
 - G. Wireless facilities should be designed to discourage unauthorized access.
- 4.2. LOCATION STANDARDS. The following location standards shall apply to all wireless facilities on public and private land:
- A. Placement with Existing Facilities. Wireless facilities should be placed with existing wireless facilities where feasible and where the placement does not create an adverse aesthetic impact due to such factors as increasing the bulk, the height or the amount of noise created by the proposed facilities.
 - B. Location Preference Order. In determining the location of proposed wireless facilities, applicants should use best efforts to review and consider locations in the preference order outlined herein. If applicable, the applicant shall include an explanation of the reason that the proposed facilities cannot be deployed at a higher-preference location. The location preference order is as follows by descending priority:
 - 1. Locations within Non-Residential Zoning Districts and which are not within the Burlingame Downtown Districts:
 - a. Located on electric power transmission towers.
 - b. Placed with existing wireless facilities which are in compliance with the provision of Chapter 25.77.
 - c. The roof of existing structures (buildings, water tanks, etc.), designed to blend in with the building, camouflaged or screened from the public right-of-way which constitutes a pedestrian travel corridor.
 - d. The side of existing structures (buildings, water tanks, etc.), designed to blend in with the building, camouflaged or

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screened from the public right-of-way which constitutes a pedestrian travel corridor.

- e. Camouflaged stealth structure (a false tree, building, artifice, etc.).
- f. Slim line monopole with top-mounted antennas. Antenna shroud should be no more than 30 percent greater in diameter than the monopole it is attached to and the transition between the pole and the shroud should be tapered.

2. Locations within the Burlingame Downtown Districts:

- a. Integrated into non-residential uses (libraries, churches, temples, parking lots, etc.); hidden from pedestrian view by means of stealth design, stealth structures, architectural integration or screening.
- b. Placed with existing wireless facilities which are in compliance with the provision of Chapter 25.77.

3. Locations within Residential Zoning Districts:

- a. Integrated into non-residential uses (libraries, churches, temples, parking lots, etc.) or located in and designed to blend in with open space (playing fields, parks, etc.); hidden from view by means of stealth design, stealth structures, architectural integration or screening.
- b. Placed with existing wireless facilities which are in compliance with the provisions of Chapter 25.77.
- c. Wireless facilities are discouraged in areas subject to the City's Hillside Area Construction Permit; if facilities cannot be avoided in the hillside areas, then visual impacts should be eliminated through stealth design, stealth structures and landscaping.

5. STANDARD PERMIT APPROVAL CONDITIONS. In addition to any supplemental conditions imposed by the approving authority, all permits granted pursuant to Chapter 25.77 and Chapter 12.11 or by operation of law shall be subject to the standard conditions stated below, unless modified in writing by the approving authority.

A. Conditions of approval for all wireless facilities.

- 1. *Code Compliance.* The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules. The facility shall meet or exceed current standards and regulations of the FCC, the FAA, and any other agency of the state or federal government

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with the authority to regulate wireless communication facilities. If such standards and regulations are changed and are made applicable to existing facilities, the owners of the facilities governed by this chapter shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring the facility into compliance with such revised standards and regulations shall constitute grounds for the removal of the facilities at the owner's expense, revocation of any permit or imposition of any other applicable penalty.

2. *Permit Duration.* This permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these standard conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a permit must either (1) remove the facility within forty-five (45) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless communication facility cannot be reduced. The wireless communication facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
3. *Timing of Installation.* The installation and construction authorized by a permit shall begin within one (1) year after its approval, or it will expire without further action by the City, unless the City, in its sole discretion, extends the time for action for good cause.
4. *Post-Installation Certification.* Within 60 calendar days after the Permittee commences full, unattended operations of a wireless facility approved or deemed-approved by the City, the Permittee shall provide the City with documentation that the wireless facility has been installed and/or constructed in compliance with the approved plans. Subject to the City's discretion, such documentation may include, but shall not be limited to, as-built drawings, site surveys, GIS data and site photographs.
5. *Inspections; Emergencies.* For wireless facilities on private land, the City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The city shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within 24 hours of doing so.

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6. *Contact.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
7. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
8. *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless communication facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
9. *Performance Bond.* Prior to performing any work authorized by this permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee.

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10. *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
11. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a permit, the Permittee shall provide the City with documentation establishing to the city's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or city utility easement to be affected by Permittee's facilities.
12. *Radio Frequency (RF) Exposure Compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee must certify post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors.
13. *Testing.* Except for emergency repairs, testing and maintenance activities of any equipment shall take place on weekdays only, and only between the hours of 8:00 a.m. and 5:00 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
14. *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Article.
15. *Noise.* Noise originating from any equipment shall be mitigated to the extent necessary to ensure compliance with applicable noise limitations under the Burlingame Municipal Code.
16. *Backup Generators.* Backup generators shall only be operated during periods of power outages or for testing during a set period.
17. *Abandonment.* If a facility is not operated for a continuous period of twelve (12) months, this permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the twelve (12) month period (i) the Reviewing Authority has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than

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ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Reviewing Authority of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Reviewing Authority. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

18. *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
19. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
20. *City Business License.* The permittee shall procure and maintain a City business license, contact information for the permittee, for the agent responsible for maintenance of the facilities and for emergency contact.
21. *Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All wireless facilities shall be operated and maintained in compliance with the following requirements:
 - a. Where applicable and feasible, each wireless facility site shall have a sign visible from a publicly accessible area, identifying the name, address, twenty-four (24) hour local or toll-free contact telephone number for both the permittee and the party responsible for

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maintenance of the facility. Information shall be updated in the event of any changes.

- b. Current contact information of the person or entity responsible for maintaining and repairing the facility shall be provided to and maintained by the Community Development Department.
- c. Wireless facilities and sites shall be kept clean and free of graffiti, litter and debris. Lighting, fences, shields, cabinets, and poles, shall be maintained in good repair and free of graffiti and other forms of vandalism, and any damage from any cause, including degradation from wind and weather, shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility as soon as practicable, and in no instance more than five (5) business days from the time of notification by any person or entity, unless the City at its sole discretion extends the time period for good cause.
- d. Where applicable, the owner or provider of wireless facilities shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan. A landscape performance and maintenance agreement with the City may be required to ensure the installation and establishment of the landscaping. Amendments or modifications to the landscape plan shall be submitted to the reviewing authority for approval.
- e. To the greatest extent technically feasible, wireless facilities shall be operated in a manner that will minimize noise impacts to surrounding properties.

B. Supplemental conditions of approval for wireless facilities in public rights-of-way. In addition to the conditions provided in the previous subsection, if applicable, all permits for wireless facilities in the public rights-of-way shall be subject to the following additional conditions, unless modified in writing by the approving authority:

- 1. *No Right, Title, or Interest.* The permission granted by this permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest (including franchise interest) in the public right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of this permit or the issuance of any other permit or exercise of any privilege given thereby.
- 2. *No Possessory Interest.* No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to this permit may create a possessory interest which

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may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

3. *Agreement with City.* If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.
 4. *Conflicts with Improvements.* For all facilities located within the public right-of-way, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
- C. Conditions of approval for eligible facilities requests. In addition to the conditions provided in the previous subsections, if applicable, all use permits for an eligible facility request shall be subject to the following additional conditions, unless modified in writing by the approving authority:
1. Permit subject to conditions of underlying permit. Any permit or wireless communication facility permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit to the extent allowed by law.
 2. No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station or ten (10) years, whichever is shorter.
6. Pursuant to Title 14 of the California Code of Regulations, the City Council of the City of Burlingame hereby finds the approval of this Resolution is exempt from CEQA because this Resolution is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment. Rather, only after an application is filed that CEQA would be implicated. Further, even if the Resolution were interpreted to permit a "project," any applicable wireless facility would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines

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section 15304 (minor alterations to land). In addition, the Resolution is not subject to CEQA pursuant to State CEQA Guidelines section 15061(b)(3), as it can be seen with certainty that there is no possibility the Resolution may have a significant effect on the environment, in that the Resolution will not necessarily result in the actual installation of any facilities in the City.

7. If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.
8. The City Clerk shall certify to the adoption of this Resolution and cause it, or a summary of it, to be published once within fifteen 15 days of adoption in a newspaper of general circulation printed and published within the City of Burlingame, and shall post a certified copy of this Resolution, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code Section 36933.
9. The documents and materials associated with this Resolution that constitute the record of proceedings on which the City Council's findings and determinations are based are located at Burlingame City Hall, 501 Primrose Road, Burlingame, CA 94010.
10. The City Clerk shall certify the adoption of this Resolution and cause it, or a summary of it, to be published as required by law.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.


Ann O'Brien Keighran, Mayor

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, certify that the foregoing resolution was adopted at a regular meeting of the City Council held on the 6th day of July, 2021 by the following vote:

AYES:	COUNCILMEMBERS: BEACH, COLSON, O'BRIEN KEIGHRAN, ORTIZ
NOES:	COUNCILMEMBERS: BROWNRIGG
ABSENT:	COUNCILMEMBERS: NONE

DocuSigned by:



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Meaghan Hassel-Shearer, City Clerk