

DRAFT Resolution Repealing Objective Standards DRAFT

The Council of the Charter City of Palo Alto RESOLVES as follows:

SECTION 1. Findings and Declarations.

a. On September 26, 2018, the Federal Communications Commission (FCC) enacted the Declaratory Ruling and Third Report and Order, known as the “Small Cell Order,” directing that local regulation of Small Wireless Facilities in the public right-of-way must be published in advance and be “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective.”

b. In response to the Small Cell Order, on June 13, 2019, the City Council adopted Ordinance 5465, which provided that Tier 2 wireless communication facilities (WCFs) (e.g., adding new equipment to an existing small wireless facility (“collocation”)) and Tier 3 WCFs (e.g., new small wireless facilities) would be no longer be subject to site-specific review and approval by the Architectural Review Board (ARB) under Municipal Code Section 18.76.020, and instead would be required only to comply with objective standards to be established by resolution. To be clear, the shift to objective aesthetic standards didn’t simply dispense with subjective standards, it a) eliminated public hearings for proposed cell towers, and b) left the decision to approve a cell tower solely in the hands of the Director of Planning & Development.

c. On December 16, 2019, the City Council adopted Resolution 9873 amending and consolidating objective aesthetic, noise, and related standards for WCFs on streetlights and wood utility poles in the public rights of way.

d. In recognition that the Small Cell Order was being challenged in a lawsuit brought by numerous municipalities against the FCC—a lawsuit City Council supported—Ordinance 5465 provides that in the event that “the City Council repeals all objective standards, an application [for a Tier 2 or 3 WCF] shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made.”

e. On August 12, 2020, the Ninth Circuit issued its decision in *City of Portland v. Federal Communications Commission*, 969 F.3d 1020, 1041-43, ruling that the Small Cell Order’s requirement that local regulations must “be no more burdensome” and “objective” exceeded the FCC’s authority and “must be vacated.”

f. The City Council now wishes to revoke the objective standards and subject Tier 2 and Tier 3 WCFs to review by the ARB.

SECTION 2. Repeal of Objective Standards

a. The City Council hereby repeals the “Objective Standards for Wireless Communication Facilities in the Public Rights of Way on Streetlight Poles and Wood Utility Poles” contained in Exhibits 1, 2 and 3 of Resolution 9873.

b. The City Council hereby directs that an application for a Tier 2 and Tier 3 WCF permit “shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made” by the ARB as provided in Municipal Code Section 18.42.110(g)(2) and (h)(2).

c. The City Council hereby directs Staff, in Staff's review of Tier 2 and Tier 3 WCF applications, to apply the guidelines in place prior to the passage of Resolution 9873—specifically, the guidelines that were prepared jointly by the ARB, by the Department of Planning & Development, and by the Utility Department—until such time that Staff brings to Council for consideration a revised list of guidelines, and Council approves these guidelines.

d. In order to ensure and maintain the safety, property values and aesthetic qualities of Palo Alto streets and neighborhoods, the City Council hereby directs Staff, in Staff's review of Tier 2 and Tier 3 WCF applications, to apply this additional guideline: Locating a WCF within 100 feet of a residential building or within 300 feet of a public school a) shall be least preferred; b) shall only be permitted when there is no other technically feasible location; and c) shall only be permitted if an expert, hired by the City and having no telecommunications industry or telecommunications industry-related clients for at least two years, has evaluated the WCF applicant's assertions as to technical feasibility. The City Council hereby directs Staff that its priority in the siting of WCFs is to maximize the distance between these facilities and residences.

f. The City Council hereby directs Staff to provide the public with the text of any new or revised guidelines Staff wishes to propose to City Council at least thirty days before Staff brings these guidelines to City Council for consideration.

SECTION 3. Savings.

If any section, subsection, clause or phrase of this resolution or the attached standards is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the resolution and exhibits. The City Council hereby declares that it would have adopted the resolution and exhibits, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. Environmental Review.

The City Council finds that this resolution is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061 of the CEQA Guidelines, because it does not authorize the construction of WCFs in any locations where such facilities are not already permitted; therefore it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. The resolution is further exempt under CEQA Guidelines sections 15301, 15302, 15303 and 15305 because it represents part of a comprehensive regulatory scheme governing minor alterations to existing facilities or small structures.