



PUBLIC NOTICE PROPOSED ORDINANCE NO. 19-980

Pursuant to *Government Code (GC) § 36933(c)(1)*, the City must publish a summary of a proposed ordinance or a proposed amendment to an ordinance provided that the summary is posted in the manner specified in *GC § 36933(a)* at least five (5) days prior to adoption of the proposal and within fifteen (15) days after the adoption with the names of the Council Members voting for and against the proposal.

TITLE/SUMMARY

ORDINANCE NO. 19-980

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, ADDING CHAPTER 9.105 TO THE MONTCLAIR MUNICIPAL CODE PERTAINING TO THE INSTALLATION OF WIRELESS "SMALL CELL" TECHNOLOGY WITHIN THE PUBLIC RIGHT-OF-WAY; AMENDING CHAPTER 9.02 TO ADD DEFINITIONS; AND AMENDING A PORTION OF CHAPTER 11.73 TO ELIMINATE CONFLICTING LANGUAGE

ORDINANCE HISTORY

The proposed Ordinance was introduced and first reading was approved at the regular City Council meeting held on Monday, March 4, 2019 by the following vote:

AYES: Johnson, Martinez, Ruh, Raft, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None

A Public Hearing to consider Second Reading and Adoption is scheduled for the next regular City Council meeting on Monday, March 18, 2019, at 7:00 p.m. in the City Council Chambers located at 5111 Benito Street, Montclair, California.

EFFECTIVE DATE

30 days after adoption

This summary is posted pursuant to *GC § 36933(c)(1)*. A certified copy of the full text of the Ordinance referenced in this notice is available for inspection upon request in the Office of the City Clerk at City Hall, located at 5111 Benito Street, Montclair, California. The full text of the Ordinance can also be viewed on the City's website at www.cityofmontclair.org under Public Notices.

I, Andrea M. Phillips, City Clerk of the City of Montclair, hereby certify that this notice has been posted in the following 3 locations within the City's boundaries and accessible to the public:

- City Hall (North Bulletin Board), 5111 Benito Street, Montclair
- Montclair Branch Library (9955 Fremont Avenue, Montclair)
- Montclair Chamber of Commerce (8800 Benson Avenue, Montclair)

By: Andrea M. Phillips
Andrea M. Phillips, City Clerk

Dated: March 6, 2019

ORDINANCE NO. 19-980

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, ADDING CHAPTER 9.105 TO THE MONTCLAIR MUNICIPAL CODE PERTAINING TO THE INSTALLATION OF WIRELESS "SMALL CELL" TECHNOLOGY WITHIN THE PUBLIC RIGHT-OF-WAY; AMENDING CHAPTER 9.02 TO ADD DEFINITIONS; AND AMENDING A PORTION OF CHAPTER 11.73 TO ELIMINATE CONFLICTING LANGUAGE

WHEREAS, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the Telecommunications Act of 1996 makes it unlawful for local government to prohibit, or have the effect of prohibiting, the "provision of personal wireless service," prevents local government from "unreasonably discriminating among providers of functionally equivalent services," and requires that local government "act on any authorization to place, construct or modify wireless service facilities within a reasonable period of time; and

WHEREAS, the next generation of wireless technology increasingly being deployed is typically referred to as "small cells;" and

WHEREAS, generally, the term "small cell" refers to the smaller coverage area of the wireless signal rather than the traditional macro-cell towers that can cover miles in each direction; and

WHEREAS, small cell facilities are often proposed to be attached to structures within public rights-of-way (ROW), including utility and light poles and other street furniture; and

WHEREAS, on October 15, 2018, the Federal Register published Federal Communications Commission (FCC) order on the *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (hereafter referred to as FCC 18-133); and

WHEREAS, the intent of FCC 18-133 is to implement Congress's vision for a consistent national policy framework to guide the deployment of next-generation of wireless facilities across the nation; and

WHEREAS, among other things, FCC 18-133 places new limitations on local authority to regulate small cells including new shot clocks for acting on applications and limits on fees which went into effect on January 14, 2019, and limits on aesthetic standards which go into effect on April 15, 2019; and

WHEREAS, the existing wireless regulations in Chapter 11.73 of the Montclair Municipal Code do not fully address the topic of small cell wireless telecommunication facilities being installed within the public right-of-way and the limitations in FCC 18-133; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of small cells and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, pursuant to Sections 9.16.010 and 9.16.100 of the Montclair Municipal Code the City Engineer is authorized to review and approve all work conducted within the public right-of-way, including the erection of utility poles for the stringing of wires for telephone, telegraph or electrical service, or for any other purpose; and

WHEREAS, this ordinance adds Chapter 9.105 to Chapter 9 of the Municipal Code to address small cell wireless telecommunication facilities being installed within the public right-of-way and requiring that such facilities comply with design guidelines and applicable fees as adopted by separate resolutions of the City Council; and

WHEREAS, this ordinance adds to the glossary of Chapter 9.02 a series of new terms related to this subject; and

WHEREAS, Chapter 11.73 contains conflicting language on regulation of wireless in the public right-of-way which is removed by this ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Montclair City Council:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION II. The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add new definitions to Chapter 9.02 ACRONYMS AND DEFINITIONS, Section 9.02.020 (Definitions) as follows:

Abandoned means any Small Cell Facilities or Wireless Support Structures that are unused for a period of one hundred eighty (180) days without the Operator otherwise notifying the City and receiving the City's approval.

Antenna means communications equipment that transmits or receives radio frequency signals.

Applicant means any Person applying for a Small Cell Permit under Chapter 9.105.

Base Station shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1).

Collocation or **Collocate** means the same as defined by the Federal Communications Commission in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended.

Decorative Pole means a pole, arch, or other structure, except for a street light pole, placed in the public right-of-way that is specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; (c) temporary holiday or special event attachments.

Design Standards means those detailed design standards, specifications and examples adopted by the City Council pursuant to Chapter 9.105 related to the design and installation of Small Cell Facilities.

Eligible Facilities Request shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3).

Meter Pedestal means the housing for the main source of power and distribution of panels for building, streetlights, parks and other uses.

Permittee means the Applicant issued a Small Cell Permit pursuant to this Chapter.

Person means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

Personal wireless service means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

Public right-of-way means the surface of, and the space within, through, on, across, above, or below, any public street, public sidewalk, public boulevard, public parkway, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City of Montclair.

Small Cell Facility shall mean a type of wireless infrastructure comprised of small antennas that are placed on existing or new vertical infrastructure (such as utility poles) within the public right-of-way, and which are accompanied by equipment installed on the pole, on or below the ground.

More specifically, a Small Cell Facility shall meet all of the following requirements:

- a. The facility
 - i. Is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d); or
 - ii. Is mounted on a structure no more than 10 percent taller than other adjacent structures; or
 - iii. Does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- b. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three (3) cubic feet in volume;
- c. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than twenty-eight (28) cubic feet in volume;
- d. The facilities does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b);
- e. The facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- f. The facility does not require antenna structure registration under 47 C.F.R. Part 17.

Small Cell Permit means the non-exclusive grant of authority issued by the City of Montclair to install a Small Cell Facility in a portion of the Public right-of-way in accordance with Chapter 9.105.

Support Structure means any structure capable of supporting a Base Station.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include Utility Poles.

Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs, street light poles, and Decorative poles.

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, without limitation, all of the following:

- a. Equipment associated with wireless communications;
- b. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;
- c. Associated towers, support structures, or base stations; and
- d. The term does not include Coaxial or fiber-optic cable that is not immediately adjacent to or directly associated with a particular Antenna and equipment.

SECTION III. The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add a new Chapter 9.105 entitled "SMALL CELL FACILITIES IN THE PUBLIC RIGHT-OF-WAY" as follows:

9.105.10 Purpose and intent.

The purpose of this chapter is to establish procedures and standards, consistent with all applicable federal, state, and local laws for small cell facilities and eligible facilities

requests in the City's public right-of-way and to ensure that facilities are carefully located, designed, constructed, modified, maintained, unified, and removed when no longer in use in conformance with all applicable health, safety, and welfare regulations.

A. Exemptions.

1. In the event that there is an emergency, disaster, special event, or other extenuating circumstances, the Community Development Director may exempt from the requirements of this chapter the installation of a "cell on wheels," "cell on truck," or a similar structure for a temporary period in connection with the emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

2. The placement or modification of Wireless Facilities by the City or by any other agency of the state solely for public safety purposes.

9.105.20 General Requirements

The following requirements shall apply to Wireless Facilities, as defined in Section 9.02.020 of the Montclair Municipal Code, which are proposed for installation within the public right-of-way:

- A. The permitting procedures and authorizations set forth in this chapter shall apply only to Small Cell Facilities and Eligible Facilities Requests in the public right-of-way. Except for small cell facilities, facilities qualifying as eligible facilities requests, exempt facilities, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other Wireless Facilities shall be permitted pursuant to this Chapter.
- B. No Person shall occupy or use the Public right-of-way without first obtaining City approval and appropriate permit(s), per the provisions of Chapter 9.105 of the Montclair Municipal Code, and any requisite consent of the City. Before placing Wireless Facilities in the public right-of-way (other than exempt facilities), an Applicant must apply for and receive all necessary approvals and permits, including, but not limited to, a general encroachment permit for work within public right-of-way as provided under Chapter 9 of the Montclair Municipal Code.
- C. In occupying or using the public right-of-way, no Person shall compromise the public health, safety, and welfare.
- D. Nothing in this chapter precludes the City from applying its generally applicable health, safety, and welfare regulations when granting a permit for a Wireless Facility in the City's public right-of-way.
- E. Any wireless facility already existing in the public right-of-way as of the date of this Chapter's adoption shall remain subject to the provisions of the Montclair Municipal Code in effect prior to this Chapter, unless and until a renewal of such then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing wireless facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the Municipal Code under which it was previously reviewed.

9.105.30 Administration

Community Development Director ("the Director") or his or her designee is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

- 1. Interpret the provisions of this Chapter and the Design Standards;
- 2. Develop forms and procedures for submission of Applications consistent with this Chapter;
- 3. Determine the amount of and collect, as a condition of the completeness of any Application, any fee established by this Chapter in accordance with applicable laws and regulations;

4. Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
5. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
6. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the Application; and
7. Take such other steps as may be required to timely act upon Applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

9.105.40 Application and Approval Process

- A. Pre-Application Conference. A pre-submittal conference with City staff and potential Applicants is strongly encouraged to discuss potential project applications on a conceptual level.
- B. Application Required. Prior to installation, modification, relocation or removal of a Wireless Facility in the public right-of-way, the Applicant shall apply to the City in-person and receive approval from the City.
- C. Required Application Materials. An applicant shall submit an application on the form approved by the Community Development and Public Works Departments, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the Montclair Municipal Code, and will not endanger the public health safety, or welfare. Application forms shall be obtained from the Department of Community Development.
- D. Application Processing Fee. An application processing fee shall be collected at the time an Application is submitted for review and approval. The fee amount shall be in conformance with the limits prescribed by law and/or the established fee resolution of the City of Montclair.
- E. Incompleteness. Applications will be processed to determine completeness and consistency with all applicable federal, state, and local laws. If an application is incomplete, the Community Development Department and/or Public Works Department shall notify the applicant in writing of the specific deficiencies with the submitted application and/or materials.
- F. Application Approval. The final review and determination regarding a complete application shall be made by the Director.
 1. Except for Eligible Facilities Requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, they find the following:
 - a. Safety and compliance of the design of the proposed facilities, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development, including compliance with any applicable design standards, as adopted by resolution of the City Council; and
 - b. Compliance with all applicable requirements and standards of state and federal law; and
 2. For eligible facilities requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - a. That the application qualifies as an eligible facilities request; and

- b. That the proposed facility will comply with all generally-applicable laws.
3. Application approval shall not be construed to waive standard permit fees for building or public works permits authorizing construction activities conducted within the City.
4. Decisions shall be in writing and include the reasons for the decision.
5. The Director is authorized, in his or her discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

9.105.50 Design Standards

The City Council shall adopt by resolution detailed Design Standards to provide guidance and a degree of consistency in the design of small cell facilities proposed for placement within the public right-of-way. The guidelines are not intended to dictate a one-size fits all approach for use at all times and/or for all potential locations, but to illustrate how small cell facilities can be aesthetically integrated into the existing public streetscape and neighborhood character with the least amount of adverse visual impact as possible.

In the event that strict compliance with any provision contained in the approved Design Standards, as applied to a specific proposed Small Cell Facility, would effectively prohibit the provision of personal wireless services, the Director may grant exceptions from strict compliance. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis; and (2) narrowly-tailored to minimize deviation from the requirements of the adopted Design Standards.

9.105.60 Standard Conditions of Approval

All applications approved to install a small cell facility within the public right-of-way shall be subject to the following standard conditions of approval, in addition to any supplemental conditions imposed by the City and other sections of this Ordinance, unless modified by the Director:

- A. Installation Time Frame. Approved small cell facilities within the public right-of-way shall be fully complete per approved plans within 180 days from the date of approval.
 1. An applicant may submit a written request for a time extension to the Community Development Director for an extended time frame not to exceed 180 days from the last day of the previous approval time frame.
 2. Requests for a time extension shall be submitted in writing to the Community Development Director at least 10 calendar days prior to the expiration date of the initial small cell facility approval date. Requests for the time frame extension shall provide a reason for the delay.
 3. Failure to complete the project within above specified periods shall deem the project approval null and void and require the removal of all work performed in the right-of-way or require the submittal of a new project application and payment of associated fees, including the cost for new building and/or public works permits.
- B. Permit Duration. A small cell permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these 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 small cell permit must either (1) remove the small cell facility within thirty (30) 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 small cell permit, which application must, among all other requirements, demonstrate that the impact of the small cell facility cannot be reduced. The small cell facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

- C. Other Permits Required. Upon the approval a Small Cell Facility Application, and prior to the commencement of work in the public right-of-way, the applicant shall obtain all required public works and/or building permits to construct and/or install the approved Small Cell Facility and pay all applicable fees.
- D. Insurance. Permittees obtaining a permit to install a small cell facility in the public right-of-way, its successors and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit commercial general liability insurance policy for bodily injury and property damage and general aggregate amount as determined by the City Risk Manager. All coverages are to be arranged on an occurrence basis and include coverage for those hazards normally identified during construction. All insurance coverage required herein shall be written in a form and by a company or companies reasonably approved by the Risk Manager of the City of Montclair and authorized to do business in the State of California. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City of Montclair as an additional insured as its interest may appear under this Permit.
- E. Transferability. The approval to operate a small cell facility within the public right-of-way may be transferred to a new person upon written notice to the City if no change to the physical configuration of the approved facility is proposed. A new person seeking to make changes to the physical components of an existing approved facility and/or desiring to upgrade to new technology may be subject to the requirement of submitting a new application and review process to utilize the subject location.
- F. Emergency Contact and Access. The Permittee shall provide a contact person and phone number where a live individual can be contacted in the event of an emergency. In the event of an emergency, the City or its designee may enter onto the facility to inspect upon a 24 hours' 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.
- G. Maintenance. The Permittee shall continually maintain the appearance of all components related to the small cell facility or wireless support structure. A description of the anticipated maintenance and monitoring program for the antennae and back-up equipment, including frequency of maintenance services, back-up service plans for disruption of service due to repair, maintenance or monitoring activities shall be provided to the City and kept on file for reference at any time.
- H. Generally Applicable Health and Safety Regulations. All Small Cell Facilities shall be designed, constructed, operated, and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including, without limitation, all applicable regulations for human exposure to RF emissions.
- I. No Liability. The City shall not be liable to the Permittee by reason of inconvenience, annoyance, or injury to the Small Cell Facilities and related ground or pole-mounted equipment or activities conducted by the Permittee therefrom, arising from the necessity of repairing any portion of the public right-of-way, or from the making of any necessary alteration or improvements, in or to, any portion of the Public right-of-way, or in, or to, City's fixtures, appurtenances, or equipment.
- J. Signal Interference Prohibited. In the event that a Permittee's Small Cell Facility interferes with the public safety radio system, or the City's or State of California's traffic signal system, then the Permittee shall, at its cost, immediately cooperate with the City to either rule out Permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

- K. Annual Fee for Use of City-Owned Structures. For small cell facilities installed on City-owned structures, the Permittee shall be required to pay the annual fee established in the master license agreement with the City.
- L. Annual Certification. On or before January 15th of every year after commencing operations, the Permittee shall submit written confirmation to the City that each facility is operating as approved. The certification shall indicate that the facility is operating as approved and that the facility complies with the most current FCC safety standards.
- M. Indemnification. The Permittee and, if applicable, the owner of the property on which the Small Cell Facilities or Wireless Support Structures in the Public right-of-way are installed shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Permittee who owns or operates Small Cell Facilities and wireless service in the Public right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Permittee, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the Public right-of-way.
- N. Surety Bond. All owners must procure and provide to the City a bond, or provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this Chapter. The bond must be maintained for as long as the owner has Small Cell Facilities and/or Wireless Support Structures located in the Public right-of-way. The bond or equivalent financial method must specifically cover the cost of removal of unused or Abandoned Small Cell Facilities, Wireless Support Structures, and all other related facilities and equipment, based on the greater of two contractors' quotes for removal that are provided by the Permittee, and damage to City property caused by a Permittee or its agent of each Small Cell Facility and/or Wireless Support Structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.
- O. Priority of City Right-of-Way Improvements. All small cell facilities located and/or utilizing existing structures, within the public right-of-way are subject to modification and/or relocation as the result of right-of-way improvements due to:
1. New development on private property requiring or conditioned to underground existing overhead wires and utility poles; or
 2. Implementation of a City Council approved capital improvement project (CIP) necessitating removal or placement of existing overhead wires, utility poles, and/or other structures underground.
- P. Relocation of A Small Cell Facility. The relocation of any small cell facility shall require the submittal and approval of a new project application and payment of associated processing and permit fees.
- Q. City Removal for Safety and Imminent Danger Reasons. In the event that the installation or operation of a small cell facility is determined by the City Engineer or Building Official to pose an imminent danger to the public, health, safety, or welfare, then the City may:
1. Order the Permittee to take immediate action, at the Permittee's sole cost and expense, to remedy the dangerous condition(s), including the requirement to disconnect, remove, or relocate all, or a component of, the applicable Small Cell Facility; or
 2. Upon the failure of the Permittee to promptly remedy the dangerous condition, the City, at the Permittee's sole cost and expense, may take appropriate action to address the dangerous condition(s), including the disconnection, removal, or relocation of any component of the Small Cell.

- R. Removal/Abandonment of Facilities. Any small cell facility that ceases to be operational for a period of more than 180 days, without due cause as approved by the City, shall be considered to be abandoned. Abandoned facilities shall, at the Permittee's sole cost and expense, be removed in its entirety from the public right-of-way, with 60 days or notice from the City.
- S. Restoration. The Permittee shall repair, at its sole cost and expense, any damage to the public right-of-way, any facilities or landscaping located within the Public right-of-way, and/or the property of any third party resulting from the Permittee's installation, removal, or relocation activities (or any other of the Permittee's activities hereunder) within ten (10) calendar days following the date of such activities. Restoration of the public right-of-way and such property must be to substantially the same condition as it was immediately before the date that the Permittee was granted a Small Cell Permit for the applicable location, or did the work at such location (even if the Permittee did not first obtain a Small Cell Permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration, and replacement shall be subject to the approval of the Community Development Director and/or Public Works Director.
- T. Changes in State or Federal Standards and Regulations. When required by any revised applicable state or federal standards and regulations, the owners of the Small Cell Facilities governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring Small Cell Facilities into compliance with any applicable revised standards and regulations shall constitute grounds for removal at the owner's expense.
- U. Tree and Vegetation Trimming. The Permittee and its contractors and agents shall obtain prior written permission from the City Public Works Director before removing or trimming any trees or other vegetation in the public right-of-way to install or maintain clearances for a small cell facility. When trimming trees or vegetation on private property, the Permittee and its contractors and agents shall notify the City and obtain prior written permission from the affected property owner(s). Improper pruning or "topping" of trees is prohibited and may result in fines and/or require replacement of the tree, at the Permittee's sole cost and expense, to the satisfaction of the Community Development Director. The City shall not be liable for any damages, injuries, or claims arising from the Permittee's actions under this section.
- V. Noise. The Permittee is required to incorporate ambient noise suppression measures and/or to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.
- W. Code Compliance. The Permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to the use of public right-of-way.
- X. No waiver of standing. The city's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

9.105.70 Standard Conditions of Approval – Eligible Facilities Requests

In addition to the conditions imposed by the Director, all permits for an eligible facility requests granted pursuant to this Article shall be subject to the following additional conditions, unless modified by the Director:

1. Permit subject to conditions of underlying permit. Any 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.
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.

3. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

9.105.80 Effect of Partial Invalidity

The provisions of this Chapter are hereby declared to be severable, and if any section, subsection, or clause of this Chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Chapter that can be given effect.

9.105.90 Penalty

The City Manager may excuse violations of this Chapter for reasons of *Force Majeure*. For purposes of this section, "*Force Majeure*" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of California or any of their departments, agencies, or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the Permittee, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

SECTION IV. Chapter 11.73 of the Montclair Municipal Code shall be amended as follows:

Amend the first sentence of Section 11.73.020 to read: This Chapter applies to all wireless telecommunications facilities existing and proposed to be located within the corporate boundary of the City of Montclair, except wireless telecommunications facilities in the public right-of-way which are subject to Chapter 9.105.

SECTION V. Section 11.73.020 of the Montclair Municipal Code shall be amended as follows:

Strike the following sentence: "These regulations shall also apply to wireless telecommunications facilities within public rights-of-way except as prohibited by State Law."

SECTION VI. Section 11.73.030 - Definitions of the Montclair Municipal Code shall be amended to delete the definition of "Micro-cell network" in its entirety.

SECTION VII. Chapter 11.73.090(D) of the Montclair Municipal Code shall be amended as follows:

Strike the entire bottom row of the Table.

SECTION VIII. Environmental Review.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds.

First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. (State CEQA Guidelines,

§ 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the small cell facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either 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 section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino within five working days of the passage and adoption of the Ordinance.

SECTION IX. Effective Date.

This Ordinance shall become effective thirty days after adoption.

SECTION X. Posting.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2019.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 19-980 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2019, and finally passed not less than five (5) days thereafter on the XX day of XX, 2019, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk