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6 **CITY OF LONG BEACH**
7 **ADMINISTRATIVE APPEAL HEARING**
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 **DENISE L. MOLONEY,**) **HEARING OFFICER’S FINDINGS AND**
10 **Appellant,**) **RECOMMENDATION**
11 **vs.**)
12 **CITY OF LONG BEACH,**)
13 **Respondent/Permitting**)
14 **Authority**)
15 **CROWN CASTLE NG WEST LLC,**)
16 **Real Party in Interest /**)
17 **Permit Applicant**)

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19 **I. INTRODUCTION**

20 This appeal came on regularly for hearing before Administrative Hearing Officer
21 Jonathan C. Navarro on October 19, 2020 at 10:00 AM via WebEx virtual hearing. The WebEx
22 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for
23 the City of Long Beach. The Appellant, Denise L. Moloney, appeared *pro se*. The City of Long
24 Beach (“City” or “Respondent”) appeared and was represented by Erin Weesner-McKinley, Esq.
25 with the Office of the City Attorney for the City of Long Beach. Licensee Crown Castle NG
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1 West LLC (“Crown” or “Applicant”) appeared and was represented by Stephen Garcia. The
2 PWD for the City of Long Beach was represented by Joshua Hickman and Pablo Leon.

3 The following member(s) of the public also appeared: Jason Webb with residence address
4 at 1359 Ximeno Avenue, Long Beach, CA 90804.

5 **II. STATEMENT OF FACTS**

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7 The facts in this matter are not in dispute. On or around July 11, 2019, Crown submitted
8 an application (“Application”) for a permit to the City for the installation of a “small cell”
9 wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s Group
10 Exhibit, pages 2-24). The Application process is governed by Chapter 15.34 of the Long Beach
11 Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs in the
12 public right-of-way to ensure that the proposed WTF complies with said requirements and
13 standards. WTF means equipment installed for the purpose of providing wireless transmission
14 of voice, data, images, or other information including but not limited to, cellular telephone
15 service, personal communications services, and paging services, consisting of equipment,
16 antennas, and network components such as towers, utility poles, transmitters, base stations,
17 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include
18 radio or television broadcast facilities, nor radio communications systems for government or
19 emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public
20 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto
21 which is either owned, operated, or controlled by the City, or is subject to an easement or
22 dedication to the City, or is a privately-owned area within City’s jurisdiction which is not yet
23 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map
24 approved by the City. LBMC 15.34.020.S.
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1 The Application sought a permit for the installation of a proposed WTF in the public
2 right-of-way in front of the property located at 1363 Ximeno Avenue, which is in a residential
3 zoning district and is within a block of Anaheim Street. The proposed WTF will be integrated
4 into an existing light pole at the site that is designated as “T3LA2580M1” in the Application
5 (“Site”). The existing street light is twenty-nine (29) feet high (the pole is twenty-eight (28) feet
6 and the luminaire adds an additional one (1) foot rise). (Respondent’s Gr. Ex., pp. 205-206). The
7 equipment is bundled in an all-in-one equipment cabinet with integrated antennas which results
8 in one (1) pole mounted attachment measuring 11.36” wide x 9.0” deep x 35.4” inches high. (Id.
9 at p. 208). The equipment cabinet will be placed in a shroud on the street light twenty-four (24)
10 feet and eleven (11) inches above the ground and will be painted to match the color of the pole.
11 (Id. at pp. 205-208). A handvault to conceal fiber and a connection to electrical power source
12 will be placed in the parkway near the Site.
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15 Upon three (3) subsequent rounds of reviews and plan revisions—the latest being January
16 24, 2020—the City approved the Application on February 05, 2020. (See approval stamp on
17 Respondent’s Gr. Ex., pp. 201-214). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
18 approval was mailed out on March 30, 2020, a posted notice was placed on the pole in front of
19 Appellant's home on March 30, 2020, and a notice was posted on the Site on April 2, 2020. (See
20 Respondent’s Gr. Ex., p. 218 [proof of mailing]; Respondent’s Gr. Ex., pp. 219-221 [proofs of
21 posting]). Said posted notice triggered the commencement of the 10-day appeal period under
22 LBMC §15.34.030.L. The deadline for filing an appeal was April 12, 2020. Appellant filed the
23 Appeal on April 1, 2020. (See Respondent’s Gr. Ex., p. 1).
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1 **III. LEGAL AUTHORITY FOR APPEAL**

2 LBMC 15.34.030.L. (Appeal of Tier B Wireless Right-of-Way Facility Permit)

3 provides ...

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- 5 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
- 6 Permit, and/or any person owning or residing at property that is adjacent to
- 7 or across the street to the location of a proposed Tier B Wireless
- 8 Telecommunications Facility, may appeal an approval or denial of an
- 9 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal
- 10 must be in writing and must be submitted to the City Clerk within ten (10)
- 11 business days of the date the notice was mailed and posted as required under
- 12 Subsection 15.34.030.K.2, above.
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- 14 2. Public Hearing Required. If an appeal is timely submitted, an independent
- 15 hearing officer selected by the City shall hold a public hearing. The City
- 16 Clerk shall set a date for the hearing that is at least fifteen (15) business
- 17 days, but no more than sixty (60) business days, after the City Clerk's receipt
- 18 of the appeal, unless the applicant and any person submitting an appeal agree
- 19 to a later hearing date.
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- 21 3. Notice of Public Hearing Date. At least ten (10) business days before the
- 22 public hearing, the City Clerk shall notify in writing any person submitting
- 23 an appeal, the applicant, and any City department that reviewed the
- 24 application of the date set for the public hearing. The City Clerk shall follow
- 25 its regular procedures for notifying the general public of the hearing.
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- 27 4. Public Hearing Record. The public hearing record shall include:
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- a. The application and the Department of Public Works' approval of the application;
 - b. Any written determination from the Department of Public Works;
 - c. Any further written evidence from any City departments submitted either prior to or during the hearing;
 - d. Any written submissions from the applicant, any person submitting an appeal, or any other interested person submitted either prior to or during the hearing; and
 - e. Any oral testimony from any City departments, the applicant, any person submitting a protest, or any interested person taken during the hearing.

1 5. Hearing Officer Determination. The Hearing Officer shall issue a written
2 resolution containing its determination within fourteen (14) business days
3 following the close of evidence at the conclusion of the public hearing on
4 the appeal. The resolution shall include a summary of the evidence and the
5 ultimate determination whether to grant, grant with modifications, or deny
6 the appeal.

7 6. Notice of Determination on Appeal.

8 a. The City Clerk shall promptly mail a notice of a determination on an
9 appeal to both the applicant, to any neighborhood association identified by
10 the Department of Development Services for any neighborhood within three
11 hundred (300) feet of the approved wireless telecommunications facility, and
12 to any person who either filed a protest, submitted evidence, or appeared at
13 the hearing, and whose name and address are known to the Department of
14 Public Works.

15 **IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**

16 **FACILITIES**

17 **1. Federal and State Laws and Regulations**

18 In 1996, Congress conducted a major overhaul of the telecommunications law in almost
19 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let
20 anyone enter any communications business—to let any communications business compete in any
21 market against any other. The Federal Communications Commission (“FCC”) was then tasked
22 to create fair rules for this new era of competition. The advent of the newest generation of
23 wireless broadband technology known as “5G” requires the installation of thousands of “small
24 cell” wireless facilities. These facilities have become subject to a wide variety of local
25 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
26 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
27 the installation and management of small cell facilities, including the manner in which local
28 governments can regulate them. Id. Sections 253(a) and 332(c)(7) of the Act provided FCC with

1 the statutory authority for limiting local regulation on the deployment of [5G] technology that
2 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.

3 These limitations provide that local government regulations:

- 4 a. shall not unreasonably discriminate among providers of functionally equivalent
5 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
- 6 b. shall not prohibit or have the effect of prohibiting the provision of personal
7 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 8 c. a local government ... shall act on any request for authorization to place,
9 construct, or modify personal wireless service facilities within a reasonable period
10 of time after the request is duly filed with such government¹. 47 U.S.C. §
11 332(c)(7)(B)(ii).
- 12 d. No State or local government or instrumentality thereof may regulate the
13 placement, construction, and modification of personal wireless service facilities
14 on the basis of the environmental effects of radio frequency emissions to the
15 extent that such facilities comply with the Commission's regulations concerning
16 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

17 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
18 have the effect of prohibiting” any entity from providing telecommunications services. *Id.* *See*
19 *also* 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
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26 ¹ The FCC has specifically shortened the shot clock for approving/denying applications for installation
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing
Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).

1 governments in regulating the deployment of 5G technology in order to remove the barriers to
2 entry for businesses to compete in the telecommunications market.

3 California case law and statutory authorities provide additional regulatory guidance for
4 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
5 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
6 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
7 Court held that while the California legislature did not intend to deprive local governments of
8 the ability to impose aesthetic regulations and public safety issues, local agencies must
9 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
10 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
11 preempt local decisions about specific sites “when there is a clear conflict with the
12 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
13 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>
14 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
15 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
16 citing General Order 159A, at p. 3.).
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20 **2. The City’s Telecom Ordinance**

21 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
22 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs
23 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
24 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
25 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
26 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
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1 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
2 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
3 and the appeal process of a Tier B² WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
4 also provides for, among others, compliance and modifications, of WTFs after installation
5 (LBMC 15.34.030.N; LBMC 15.34.030.S).

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7 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

8 By letter dated April 1, 2020, Appellant stated her objections regarding the “risks and
9 health concerns that 5g networks produce, such as: [t]he network generates radiofrequency
10 radiation that can damage DNA and lead to cancer, [c]ase oxidative damage that can cause
11 premature aging, [d]isrupt cell metabolism, [l]ead to other diseases through the generation of
12 stress proteins.”

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14 Appellant further stated that “[t]he World Health Organization believes that 5G is a
15 dangerous escalation of cellular technology, one packed with higher energy radiation that
16 delivers damaging effects on human beings. In fact, current research shows with the onset of the
17 Coronavirus pandemic, it is believed that 5G is the cause of the world's current problems. The
18 decades of studies show that radiation emitted produces “electromagnetic hypersensitivity”
19 which is a disease where people experience debilitating symptoms in the presence of radiation
20 from 5g radiation emissions. In addition, there are two schools in less than a 5-mile radius to this
21 proposed WTF installation location which poses a dangerous threat to the children and public
22 health. The two schools are William Cullen Bryant Elementary and Wilson High School,
23 respectively. In addition to this posing a danger to myself, my family, the public and surrounding

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27 ² “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
Protected Location, or Zoning Protected Location.

1 schools, during this COVID-19 outbreak, we should follow Governor Garcetti's
2 recommendations to "Slow the Spread" during this pandemic crisis we are in. I therefore refuse
3 to allow this permit and refuse the installation of this dangerous proposed Wireless
4 Telecommunication Facility immediately! This is serious and violates the Safer at Home order
5 from Los Angeles Mayor Eric Garcetti that was put into order and effect today, April 1, 2020.”
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7 Upon receipt of Appellant’s letter, the Long Beach City Clerk’s office then scheduled a
8 formal hearing with regard to Appellant’s objections.

9 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

10 **1. Appellant’s Evidence**

11 During the WebEx virtual hearing on October 19, 2020, this hearing officer explained to
12 all the participants the guidelines for the hearing. These include examination of witnesses and
13 presentation of evidence. It was stated on the record that the hearing officer received the City’s
14 submission package³ in advance of the hearing both in hardcopy and electronic format. The
15 hardcopy was received at this hearing officer’s business address and included a Proof of Service
16 indicating that the hardcopy was sent to said business address, the Appellant’s address on record,
17 and the Applicant’s address on record in care of its representative, Stephen Garcia. The package
18 also included a Proof of Service that the electronic copy was transmitted to the email addresses
19 of the hearing officer, the Appellant, and the Applicant’s representative. During the hearing, all
20 parties acknowledged receipt of the City’s submission package.
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23 In addition to the April 1, 2020 letter from Appellant, Appellant provided an additional
24 statement on the record that was read during the hearing. In her statement, Appellant reaffirmed
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27 ³ The City’s submission package included a copy of Appellant’s letter dated April 1, 2020.
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1 her concerns of the health risks associated with 5g networks. She discussed the deleterious
2 effects of “wireless frequencies that are considered low including cancer, memory damage,
3 behavioral problems, headaches, and damage to the reproductive system.” Appellant voiced
4 these concerns because of her health history that includes migraines, hormonal mood swings, and
5 susceptibility to cancer. She also mentioned research findings indicating the negative effect on
6 the brain’s processing of information due to electromagnetic field (EMF) signals, and that
7 Centers for Disease Control (CDC) guidelines state that 5g radiation can damage a person’s
8 DNA, and that long sustained doses of 5g radiation can also cause acute radiation syndrome
9 (ARS), continuous radiation injuries (CRI), and ultimately cancer. In addition, Appellant stated
10 that a CDC study reveals that cumulative daily radiation exposure to wireless radiation is
11 associated with other serious health effects, and that having a 4g or 5g tower in front of one’s
12 home means that exposure is continuous and cumulative because the equipment cannot be turned
13 off. She also stated that a peer review indicates that exposure to wireless radiation can cause
14 cancer, alter brain development, damage sperm count, and that cell towers are also associated
15 with headaches, hormone changes, memory and sleep problems, and damage to human blood.
16 Appellant also stated that a review paper supports the conclusion that mobile phone and wireless
17 frequency radiation cause cancer, and that wireless technology has not been tested for long term
18 safety. Appellant then expressed her concerns regarding the City’s deployment of WTFs during a
19 pandemic in contravention with the State of California’s “Stay At Home” order to mitigate the
20 spread of COVID-19, the effect of which minimizes the public’s participation in the noticing
21 requirements. Appellant then requested the City to consider an alternate installation site for the
22 proposed WTF such as a park or a golf course that are not inhabited by residents.
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1 This hearing officer then requested Appellant to provide the supporting documents for
2 her statement in the form of literature, articles, etc., and gave Appellant until the end business
3 day on October 21, 2020 to submit said evidence. The City was given until October 22, 2020 to
4 submit their response to Appellant's submission. Appellant, by an email sent by Jason Webb,⁴
5 submitted the additional evidence on October 21, 2020. The City submitted its response on
6 October 22, 2020.
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8 **2. The City's Evidence**

9 In advance of the formal hearing, the City submitted the following evidence
10 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 12 • April 1, 2020 Appeal Letter to the City of Long Beach from
13 Denise L. Moloney (Respondent's Group Exhibit Page 1)
- 14 • Crown Castle's July 11, 2019 City of Long Beach Application (Respondent's
15 Group Exhibit Pages 2-24)
- 16 • Crown Castle Master License Agreement (MLA) (which includes Crown Castle's
17 maintenance obligations) (Respondent's Group Exhibit Pages 25-80)
- 18 • Ericsson Radio Description - Radio 2203; Noise Analysis No. 1 (Respondent's
19 Group Exhibit Pages 81-129)
- 20 • Ericsson Radio Description - Radio 2205; Noise Analysis No. 2 (Respondent's
21 Group Exhibit Pages 130-166)
- 22 • Propagation Maps - T Mobile RF Plots - Small Cell Capacity Solution
23 (Respondent's Group Exhibit Pages 167-172)
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27 ⁴ Jason Webb also provided a public comment on the record citing similar health concerns that
28 Appellant stated in her appeal letter.

- 1 • Structural Analysis (Respondent’s Group Exhibit Pages 173-187)
- 2 • Radio Frequency Electromagnetic Fields Exposure Report (Respondent’s Group
- 3 Exhibit Pages 188-200)
- 4 • February 5, 2020-Approved Application (Respondent’s Group Exhibit Pages 201-
- 5 214)
- 6 • Tier B Justification (Respondent’s Group Exhibit Page 215)
- 7 • Mailing List (Respondent’s Group Exhibit Page 216)
- 8 • Mailing Map (Respondent’s Group Exhibit Page 217)
- 9 • March 30, 2020 - USPS Proof of Mailing (Respondent’s Group Exhibit Page 218)
- 10 • Public Notice Site Posting (Respondent’s Group Exhibit Page 219)
- 11 • April 2, 2020 - Proof of Posting No. 1 (Respondent’s Group Exhibit Page 220)
- 12 • April 2, 2020 - Proof of Posting No. 2 (Respondent’s Group Exhibit Page 221)

15 The City offered no additional evidence on the record during the hearing.

16 **VII. DISCUSSION**

17 **1. Health Concerns**

18 Appellant’s main issue on appeal is “health concerns.” (See Respondent’s Gr. Ex., p. 1).

19 Appellant’s letter and statement during the hearing cite numerous concerns regarding alleged

20 deleterious impact of wireless radio frequency on a person’s health. In support of her argument,

21 Appellant cited various studies, research information, peer review articles, etc. However, the

22 City’s regulatory authority in this regard is limited and preempted by federal law. 47 U.S.C. §

23 332(c)(7)(B)(iv) (“No State or local government or instrumentality thereof may regulate the

24 placement, construction, and modification of personal wireless service facilities on the basis of

25 the environmental effects of radio frequency emissions to the extent that such facilities comply

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1 with the [FCC]’s regulations concerning such emissions.) The Applicant’s submission of a Radio
2 Frequency Electromagnetic Fields Exposure Report demonstrating that the emissions from the
3 proposed WTF is within general population and occupational limits established by the FCC for
4 radio frequency emissions complies with FCC regulations. (See Respondent’s Gr. Ex., pp. 188-
5 200). There is, therefore, no basis to deny the approved permit for the proposed WTF on the
6 basis of “health concerns.”
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8 **2. Covid-19 and Appeal Process**

9 Appellant also argues that Covid-19 impacted her ability—as well as the public’s—to
10 participate in the appeal process. However, Appellant’s argument is without merit. Appellant
11 filed the Appeal with the City on April 1, 2020, eleven (11) days before the April 12, 2020
12 appeal deadline. (See Respondent’s Gr. Ex., p. 1). The fact that Appellant timely filed her appeal
13 and a formal hearing was conducted on October 19, 2020 only evidences that Covid-19 did not
14 impede Appellant’s right to appeal the proposed WTF.
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16 Furthermore, Appellant could have garnered a larger participation in the appeal process
17 from others who may be affected by the proposed WTF during the period between filing her
18 appeal and the formal hearing. It is within Appellant’s right to provide a response from those
19 affected during the hearing. LBMC § 15.34.030.L.4 (public hearing record include “any written
20 submissions from the applicant ... or any other interested person submitted either prior to or
21 during the hearing” and “any oral testimony from ... any person submitting a protest, or any
22 interested person taken during the hearing”). It is also worth noting that the formal hearing was
23 conducted on October 19, 2020—more than six (6) months after Appellant submitted her appeal
24 letter. Appellant had ample time to gather responses from those affected and submit or present
25 them prior to or during the hearing, but failed to do so.
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1 Appellant also argues that the installation of the proposed WTF is in contravention with
2 the State of California’s Stay Home (COVID-19) Order. However, there is nothing on the record
3 that neither the application process nor appeal process violates such order. In fact, the continuity
4 of essential services is in conformance with the Stay Home Order in order to protect the health
5 and well-being of all Californians. [See Executive Order N-33-20 (March 19, 2020)]. The federal
6 government has identified 16 critical infrastructure sectors whose assets, systems, and networks,
7 whether physical or virtual, are considered so vital to the United States that their incapacitation
8 or destruction would have a debilitating effect on security, economic security, public health or
9 safety, or any combination thereof. (Id.) Accordingly, pursuant to the Stay Home Order, workers
10 in “Communications and Information Technology”—as an essential service sector—may
11 continue their work because of the importance to Californians’ health and well-being. (Id.)

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14 **VIII. RECOMMENDATION**

15 Appellant is a credible witness. This hearing officer has no reason to doubt the veracity
16 and sincerity of Appellant’s statements in either her appeal letter or during the formal hearing.
17 However, inasmuch as Appellant’s concerns and grievances warrant serious consideration,
18 Appellant has otherwise offered no legal basis or relevant evidence in support of her appeal. In
19 contrast, the City submitted a comprehensive package in opposition to the appeal that included
20 its brief and supporting legal authorities and relevant evidence. The City’s evidence included
21 all the materials and documentation that the Applicant submitted to the City as part of the
22 application process. After three (3) rounds of plan review and revisions, the City determined
23 that the Applicant’s proposed WTF met all the applicable requirements and standards set forth
24 in the LBMC 15.34, and approved the permit application accordingly. As stated above, this
25 hearing officer is bound by the provisions of the LBMC 15.34, and cannot look elsewhere in
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1 making its determination. Accordingly, this hearing officer has found nothing on the record to
2 determine that the Applicant's permit for the proposed WTF was granted in violation of LBMC
3 15.34.

4 Based on the foregoing, this hearing officer hereby recommends that Appellant's
5 appeal be denied and that Applicant's permit for the proposed WTF be upheld.

6 Dated this 5th day of November 2020

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8 /s/ JONATHAN C. NAVARRO, ESQ.
9 Administrative Hearing Officer