I. INTRODUCTION

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

The following member(s) of the public also appeared, but did not provide any comments: Rob and Kathy Allison, Elizabeth Nygard, Barbara Breeden, Daisy Uy-Kimpang, Gary Kraus, and Korina.

II. STATEMENT OF FACTS

The facts in this matter are not in dispute. On or around April 13, 2020, Applicant submitted an application ("Application") for a permit to the City for the installation of a "small cell" wireless telecommunications facility ("WTF") in the public right-of-way. (See Respondent’s Group Exhibit, Pages 2-14). The Application process is governed by Chapter 15.34 of the Long Beach Municipal Code ("LBMC") that includes requirements and applicable standards for WTFs in the public right-of-way to ensure that the proposed WTF complies with said requirements and standards. WTF means equipment installed for the purpose of providing wireless transmission of voice, data, images, or other information including but not limited to, cellular telephone service, personal communications services, and paging services, consisting of equipment, antennas, and network components such as towers, utility poles, transmitters, base stations, conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include radio or television broadcast facilities, nor radio communications systems for government or emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto which is either owned, operated, or controlled by the City, or is subject to an easement or dedication to the City, or is a privately-owned area within City’s jurisdiction.
which is not yet dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the City. LBMC 15.34.020.S.

The Application sought a permit for the installation of a proposed WTF in the public right-of-way in front of the property located at 1452 Lemon Avenue that is across the street from Appellant’s residence. Lemon Avenue is between Martin Luther King, Jr. Avenue and Alamitos Avenue, which is in a residential zoning district. The proposed WTF will be integrated into an existing light pole at the site that is designated as “T3LA2647M1” in the Application (“Site”). As proposed, the WTF will be integrated into a new light pole that will replace the existing light pole at the Site. The existing light pole, including the luminaire, is twenty-seven (27) feet high, and will remain that height after installation. (Respondent’s Ex., p. 196.) Three shrouded antennas will be placed at the top of the pole, with the bottom of the antennas twenty-one (21) feet three (3) inches above the ground. (Id. at pp. 197-198). The equipment will be bundled in an all-in-one equipment cabinet with integrated antennas which limits the WTF to one (1) pole mounted attachment measuring 11.36” wide X 9.0” deep X 35.4” high. (Id. and pp. 198, 202). The equipment shroud will be painted to match the color of the existing pole. (Id.). The installation includes setting a hand-vault in the parkway to conceal fiber and a connection to power. (Id. at p. 202).

Upon three (3) subsequent rounds of reviews and plan revisions—the latest being May 7, 2020—the City approved the Application on May 20, 2020. (See approval stamp on Respondent’s Ex., pp. 191-201). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the approval was mailed out on May 28, 2020, and a posted notice was placed on the pole in front of Appellant’s home and on the Site on May 30, 2020. (See Respondent’s Ex., pp. 205 [proof of mailing] and pp. 206-208 [proofs of posting]). Said posted notice triggered the commencement
of the 10-business day appeal period under LBMC §15.34.030.L. The deadline for filing an appeal was June 12, 2020. Appellant filed the Appeal on June 2, 2020. (See Respondent’s Gr. Ex., p.1).

III. LEGAL AUTHORITY FOR APPEAL

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

1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility Permit, and/or any person owning or residing at property that is adjacent to or across the street to the location of a proposed Tier B Wireless Telecommunications Facility, may appeal an approval or denial of an application for a Tier B Wireless Right-of-Way Facility Permit. An appeal must be in writing and must be submitted to the City Clerk within ten (10) business days of the date the notice was mailed and posted as required under Subsection 15.34.030.K.2, above.

2. Public Hearing Required. If an appeal is timely submitted, an independent hearing officer selected by the City shall hold a public hearing. The City Clerk shall set a date for the hearing that is at least fifteen (15) business days, but no more than sixty (60) business days, after the City Clerk’s receipt of the appeal, unless the applicant and any person submitting an appeal agree to a later hearing date.

3. Notice of Public Hearing Date. At least ten (10) business days before the public hearing, the City Clerk shall notify in writing any person submitting an appeal, the applicant, and any City department that reviewed the application of the date set for the public hearing. The City Clerk shall follow its regular procedures for notifying the general public of the hearing.

4. Public Hearing Record. The public hearing record shall include:

   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.

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


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

IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS FACILITIES

1. Federal and State Laws and Regulations

In 1996, Congress conducted a major overhaul of the telecommunications law in almost 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let anyone enter any communications business—to let any communications business compete in any market against any other. The Federal Communications Commission (“FCC”) was then tasked to create fair rules for this new era of competition. The advent of the newest generation of wireless broadband technology known as “5G” requires the installation of thousands of “small cell” wireless facilities. These facilities have become subject to a wide variety of local regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to the installation and management of small cell facilities, including the manner in which local governments can regulate them. Id. Sections 253(a) and 332(c)(7) of the Act provided FCC with the statutory authority for limiting local regulation on the deployment of [5G] technology that reflects congressional intent in 1996 to expand deployment of wireless services. Id. at p. 30.

These limitations provide that local government regulations:

a. shall not unreasonably discriminate among providers of functionally equivalent services, 47 U.S.C. § 332(c)(7)(B)(i)(I);

b. shall not prohibit or have the effect of prohibiting the provision of personal wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);

c. a local government … shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government. 47 U.S.C. § 332(c)(7)(B)(ii).

d. No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

1 The FCC has specifically shortened the shot clock for approving/denying applications for installation of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all other collocation applications. Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv., 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).
Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or have the effect of prohibiting” any entity from providing telecommunications services. Id. See also 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local governments in regulating the deployment of 5G technology in order to remove the barriers to entry for businesses to compete in the telecommunications market.

California case law and statutory authorities provide additional regulatory guidance for installation of WTFs. Wireless providers are granted a statewide franchise to engage in the telecommunications business. Pub. Util. Code § 7901; see also T-Mobile West LLC v. City and County of San Francisco (2019) 6 Cal.5th 1107, 1117). In T-Mobile, the California Supreme Court held that while the California legislature did not intend to deprive local governments of the ability to impose aesthetic regulations and public safety issues, local agencies must nonetheless respect that statewide franchise when making decisions on proposed facilities. Id.

Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to preempt local decisions about specific sites “when there is a clear conflict with the Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3 (General Order 159A), available at <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF> ) Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread cellular services to state residents” are threatened. (T-Mobile West, supra, 6 Cal.5th at 1124, citing General Order 159A, at p. 3.).

2. The City’s Telecom Ordinance

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

V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER

By letter dated April 8, 2020, Appellant stated her objections with regard to the health risks associated with the proposed WTF and that there is a “Historical House” next door to her. More specifically, Appellant stated that “[t]hese radiation-emitting antennas should not be installed in residential areas. It has been noted that these cells cause cancer and other serious health effects on people especially children due to the additional exposure to radiation. They can cause cancer, fatigue, sleep disturbance, headaches, concentration problems, depression, memory problems, cardiovascular problems, hearing disruption, skin problems, dizziness, etc.” Appellant further stated that “I don’t want my 98-year-old mother to be exposed to all of that radiation and I have children, grandchildren and great-grandchildren that frequent my home most of the time. My home is right across the street from the light pole where this installation is to occur.”

Appellant also stated that “[i]n our neighborhood there are many children and babies that live and play in their yards that will be exposed to this radiation. We have New Hope Senior

2 “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility where the proposed location for the facility is in a Planning Protected Location, Coastal Zone Protected Location, or Zoning Protected Location.
Center which is nearby. A lot of the seniors walk from New Hope Home to Lemon Avenue and back and a lot of them park their car underneath the very light pole where this Wireless Telecommunication Facility is to be located. Next to the New Hope Senior Center is New Hope Baptist Church. At New Hope Baptist Church there are a lot of seniors and children that attend and park their cars on this block when they go to church services. When they have weddings and funerals at New Hope Baptist Church, this block is full of cars of people attending the event. Therefore, a lot of people will be affected by this (WTF). Also, New Hope Senior Center is used as a “Polling Place” on voting day with thousands of people coming through. There is a “Historical House” - Mr. Ernest McBride that is next door to me.”

Appellant then requested the City to “deny the permit for the [proposed WTF] . . . and take into consideration the health and safety of the many families that live in the vicinity of Lemon Avenue and New York Street.”

Upon receipt of Appellant’s letter, the Long Beach City Clerk’s office then scheduled a formal hearing with regard to Appellant’s objections.

VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES

1. Appellant’s Evidence

During the WebEx virtual hearing on October 20, 2020, this hearing officer explained to all the participants the guidelines for the hearing. These include examination of witnesses and presentation of evidence. It was stated on the record that the hearing officer received the City’s

3 Appellant sent additional comments in writing via email in the early morning prior to the hearing. These additional comments reiterated her concerns and provided more background information regarding the health risks associated with wireless technology and the “Historical House” located next door to her.
submission package in advance of the hearing both in hardcopy and electronic format. The hardcopy was received at this hearing officer’s business address and included a Proof of Service indicating that the hardcopy was sent to said business address, the Appellant’s address on record, and the Applicant’s address on record in care of its representative, Stephen Garcia. The package also included a Proof of Service that the electronic copy was transmitted to the email addresses of the hearing officer, the Appellant, and the Applicant’s representative. During the hearing, all parties acknowledged receipt of the City’s submission package.

Aside from the second (2nd) letter received from Appellant via email immediately prior to the hearing, no additional evidence was submitted by Appellant during or subsequent to the hearing.

2. The City’s Evidence

In advance of the formal hearing, the City submitted the following evidence (Respondent’s Group Exhibit) in support of its opposition to the appeal:

- June 2, 2020 Appeal Letter to the City of Long Beach from Laurella Theus (Respondent’s Group Exhibit Page 1)
- Crown Castle's April 13, 2020 City of Long Beach Application (Respondent’s Group Exhibit Pages 2-14)
- Crown Castle Master License Agreement (MLA) (which includes Crown Castle's maintenance obligations) (Respondent’s Group Exhibit Pages 15-70)
- Ericsson Radio Description - Radio 2203; Noise Analysis No. 1 (Respondent’s Group Exhibit Pages 71-119)

The City’s submission package included a copy of Appellant’s letter dated April 8, 2020.
• Ericsson Radio Description - Radio 2205; Noise Analysis No. 2 (Respondent’s Group Exhibit Pages 120-156)

• Propagation Maps — T Mobile RF Plots — Small Cell Capacity Solution (Respondent’s Group Exhibit Pages 157-162)

• Structural Analysis (Respondent’s Group Exhibit Pages 163-177)

• Radio Frequency Electromagnetic Fields Exposure Report (Respondent’s Group Exhibit Pages 178-190)

• May 20, 2020 - Approved Application (Respondent’s Group Exhibit Pages 191-201)

• Tier B Justification (Respondent’s Group Exhibit Page 202)

• Mailing List (Respondent’s Group Exhibit Page 203)

• Mailing Map (Respondent’s Group Exhibit Page 204)

• May 28, 2020 - USPS Proof of Mailing (Respondent’s Group Exhibit Page 205)

• Public Notice Site Posting (Respondent’s Group Exhibit Page 206)

• May 29, 2020 - Proof of Posting No. 1 (Respondent’s Group Exhibit Page 207)

• May 29, 2020 - Proof of Posting No. 2 (Respondent’s Group Exhibit Page 208)

The City offered no additional evidence on the record during the hearing, but appended its argument regarding the “Historical House” located next door to Appellant’s. The City argued that the “public right-of-way” in a historic neighborhood is separate and apart from the [historic] home, but with an understanding of the City’s duty to maintain said “public right-of-way.” The City further argued that the historic protections that would apply to historic homes that are registered as such in the Long Beach Municipal Code do not extend to the “public right-of-way” right outside of that home. Thus, the Long Beach City Cultural Heritage Commission’s ability to
issue a certificate of appropriateness does not apply to the installation of the proposed WTF at the Site.

VII. DISCUSSION

1. Health Effects

Appellant’s main issue on appeal is the effect of wireless radiation on her and her family’s health (See Respondent’s Gr. Ex., p. 1). Appellant cited numerous alleged health effects in her original and supplemental letters. However, the City’s regulatory authority in this regard is limited and preempted by federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]’s regulations concerning such emissions). The Applicant’s submission of a Radio Frequency Electromagnetic Fields Exposure Report demonstrating that the emissions from the proposed WTF is within general population and occupational limits established by the FCC for radio frequency emissions complies with FCC regulations. (See Respondent’s Gr. Ex., pp. 178-190). There is, therefore, no basis to deny the approved permit for the proposed WTF on the basis of alleged effects of wireless technology on one’s health.

2. Historical House next to Appellant’s Home

Appellant also raised the issue of a “Historical House” next door to her. The City does not dispute this factual allegation from Appellant. In fact, this hearing officer has sua sponte

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confirmed that the former home of Ernest McBride\textsuperscript{5} located at 1461 Lemon Avenue was
designated as a historic landmark (“McBride Landmark”) by the City of Long Beach. See
http://www.longbeach.gov/lbds/planning/preservation/historic-landmarks2/historic-
landmarks/mcbride-home/. The question then remains whether the installation of the proposed
WTF at the Site is subject to additional requirements pertaining to the McBride Landmark.

Any person owning or residing at property that is adjacent to or across the street to the
location of a proposed Tier B Wireless Telecommunications Facility, may appeal an approval
or denial of an application for a Tier B Wireless Right-of-Way Facility Permit. LBMC
15.34.030.L.1. “Tier B Wireless Telecommunications Facility” means a wireless
telecommunications facility where the proposed location for the facility is in, among others, a
Planning Protected Location. LBMC 15.34.020.AA. “Planning Protected Location” means a
proposed location for a wireless telecommunications facility on a utility pole or street light
pole that is on a public right-of-way that is adjacent to a City landmark. LBMC
15.34.020.P.3. “Adjacent” means on the same side of the street and in front of the building or
the next building on either side, when used in connection with a City landmark. LBCM
15.34.020.B. An application for a proposed WTF in a Planning Protected Location is subject
to Planning Protected Location Compatibility Standard and would have to demonstrate that it
would be compatible with the location, i.e., whether the proposed WTF would significantly
degrade the aesthetic attributes that were the basis for the special designation of the building.
LBMC 15.34.030.Q.3. While the City correctly argues that the Long Beach Cultural Heritage
Commission (“LBCHC”) has sole jurisdiction to review any proposed modifications to City

\textsuperscript{5} Ernests Samuel McBride Sr. (November 20, 1909 – May 5, 2007) was an African American civil
rights activist and community leader based in Long Beach, California. See
landmarks (or a building or structure therein), LBMC 2.63.040.B, and that the LBCHC does not have jurisdiction over proposed modifications on public right-of-way outside City landmarks, the Telecom Ordinance nonetheless confers the PWD with regulatory jurisdiction over proposed installations of WTFs located adjacent to landmarks. The question then turns to whether the proposed Site is adjacent to a City landmark. Upon review of the Site, it appears that the proposed WTF is across the street and not adjacent to the McBride Landmark, and therefore not in a Planning Protected Location. While the “public right-of-way” in front of, or the next building on either side of, the McBride Landmark is in a Planning Protected Location, the proposed WTF at the Site is not. The proposed WTF, therefore, is not subject to a Planning Protected Location Compatibility Standard.

VIII. RECOMMENDATION

Appellant is a credible witness. This hearing officer has no reason to doubt the veracity and sincerity of Appellant’s statements in either her appeal letter(s) or during the formal hearing. However, inasmuch as Appellant’s concerns and grievances regarding the health effects of wireless technology warrant serious consideration, Appellant has otherwise offered no legal basis or relevant evidence in support of this issue in her appeal. Appellant’s other issue with regard to the McBride Landmark located next door to her did raise relevant facts and legal arguments. However, upon further consideration of the facts in this case, the proposed WTF does not appear to be subject to additional historic landmark restrictions or requirements pursuant to the Telecom Ordinance.

In its opposition to the appeal, the City submitted a comprehensive package that included its brief and supporting legal authorities and relevant evidence. The City’s evidence included all the materials and documentation that the Applicant submitted to the City as part of
the application process. After three (3) rounds of plan review and revisions, the City
determined that the Applicant’s proposed WTF met all the applicable requirements and
standards set forth in the LBMC 15.34, and approved the permit application accordingly. As
stated above, this hearing officer is bound by the provisions of the LBMC 15.34, and cannot
look elsewhere in making its determination. Accordingly, this hearing officer has found
nothing on the record to determine that the Applicant’s permit for the proposed WTF was
granted in violation of LBMC 15.34.

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

Dated this 9th day of November 2020

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