HEARING OFFICER’S FINDINGS AND RECOMMENDATION

I. INTRODUCTION

This appeal came on regularly for hearing before Administrative Hearing Officer Jonathan C. Navarro on October 23, 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, Deborah Reed (“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

DEBORAH REED, Appellant,

vs.

CITY OF LONG BEACH,

Respondent/Permitting Authority

CROWN CASTLE NG WEST LLC,

Real Party in Interest / Permit Applicant

HEARING OFFICER’S FINDINGS AND RECOMMENDATION
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: Laurella Theus (residence address at 1455 Lemon Avenue) and Rob Allison (residence address at 1800 Carfax Avenue).

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 also 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 Gr. 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. 200).

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 Gr. 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 29, 2020. (See Respondent’s Gr. 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

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\(^1\). 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

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\(^1\) 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. 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 B² 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 June 3, 2020, Appellant stated her objections with regard to the health risks associated with the proposed WTF and that “residential neighborhoods are not designed for [WTFs].” More specifically, Appellant stated that WTFs “emit radiation, which is known to cause cancer and other serious health problem among adults and children over time.” Appellant also stated that the “neighborhood is comprised of families with young children and seniors that live and play [there].” (See Respondent’s Gr. Ex., p.1).

Appellant then requested the City to deny the permit for the proposed WTF outside her home and to consider the health and safety of her family and neighbors.

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

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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.
VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES

1. Appellant’s Evidence

During the WebEx virtual hearing on October 23, 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 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.

Appellant offered no additional evidence 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 3, 2020 Appeal Letter to the City of Long Beach from Deborah Reed (Respondent’s Group Exhibit Page 1)

- Crown Castle’s April 13, 2020 City of Long Beach Application (Respondent’s Group Exhibit Pages 2-14)

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3 The City’s submission package included a copy of Appellant’s letter dated June 3, 2020.
• 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)

• 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 or subsequent to the hearing.
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). More specifically, Appellant stated that WTFs “emit radiation, which is known to cause cancer and other serious health problem among adults and children over time.” (Id.). 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. WTFs in Residential Neighborhoods

Appellant also claims that “residential neighborhoods are not designed for [WTFs].” (See Respondent’s Gr. Ex., p.1). However, Appellant failed to explain why residential neighborhoods are not designed for WTFs, or why other types of areas, such as commercial or industrial zoned neighborhoods are more appropriately designed for WTFs. Moreover, upon closer examination of the Telecom Ordinance and relevant federal regulations, the FCC, as well as the City, expressly provide for the installation of small cells in residential areas. To that end, the City’s
Telecom Ordinance expressly allows for an appeal process for an approval or denial of proposed WTFs in residential neighborhoods. (See LBMC 15.34.030.L.1 [“...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.”]).

Furthermore, the selection of the Site location of the proposed WTF was made out of practical necessity. The record shows that the City required Applicant to provide propagation maps showing both the existing and proposed coverage in the vicinity of the Site. (See Respondent’s Gr. Ex., pp. 157-162). Those maps indicate that it was necessary to locate the proposed WTF at the Site in order to improve existing weak/poor coverage at and around that location. (Id.). The Applicant and City’s objective to improve signal coverage in and around the Site is consistent with the City’s plan allowing provision of wireless communications services adequate to serve the public’s interest within the City. LBMC 15.34.010.

VIII. RECOMMENDATION

Appellant is a credible witness. This hearing officer has no reason to doubt the veracity and sincerity of Appellant’s statements in her appeal letter or during the formal hearing. However, inasmuch as Appellant’s concerns and grievances warrant serious consideration, Appellant has otherwise offered no legal basis or relevant evidence in support of her appeal. In contrast, the City submitted a comprehensive package in opposition to the appeal 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 16th day of November 2020

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