I. INTRODUCTION

This appeal came on regularly for hearing before Administrative Hearing Officer Jonathan C. Navarro on November 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 Appellants, Alfonso Garcia and Catherine Ungos ("Appellants") 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. Applicant Los Angeles SMSA Limited Partnership, D/B/A Verizon Wireless (“Verizon” or “Applicant”) appeared and was represented mainly by Daisy Uy Kimpang. The following also appeared for the Applicant: Barbara Breeden, Bill Hammett, Charaka Wijeweera, Katherine Baxendale, Mario De La Mora, and Tami Pritchard. The PWD for the City of Long Beach was represented by Joshua Hickman and Pablo Leon. No member of the public appeared during the hearing.

II. STATEMENT OF FACTS

The facts in this matter are not in dispute. On or around January 31, 2020, Verizon 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. (Respondent’s Group Exhibit, pages 2-11). 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 adjacent to the property located at 5402 E. Daggett Street, which is in a residential
zoning district. The proposed WTF will be integrated into a new light pole that will replace the
existing light pole at the site that is designated as “CA002_LBC_LNGBCH-176” in the
Application (“Site”). The existing wood light pole is twenty-nine (29) feet and nine (9) inches
high and the top of the existing luminaire is twenty-six (26) feet and ten (10) inches high.
(Respondent’s Gr. Ex., pp. 216-217). The replacement light pole would be twenty-six (26) feet
high and the top of the proposed luminaire would be twenty-seven (27) feet high. (Id). This
accomplishes City’s goal of maintaining the same luminaire height within an eighteen (18) inch
variance. Three integrated antennas will be placed at the top of the pole, with the bottom of the
antennas twenty-two (22) feet one (1) inch from the ground. (Respondent’s Gr. Ex., pp. 207,
216-217). Three (3) pull boxes for fiber and power will be placed adjacent to the pole with all
associated cables routed inside the pole. (Id).

Upon three (3) subsequent rounds of reviews and plan revisions—the latest being August
17, 2020—the City approved the Application on September 9, 2020. (See approval stamp on
Respondent’s Gr. Ex., pp. 208-234). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
approval was mailed out on September 29, 2020, and a posted notice was placed on the pole
adjacent to Appellants’ home and on the Site on September 29, 2020. (See Respondent’s Gr. Ex.,
pp. 236-241 [proof of mailing]; Respondent’s Gr. Ex., pp. 242-244 [proofs of posting]). Said
posted notice triggered the commencement of the 10-day appeal period under LBMC
15.34.030.L. The deadline for filing an appeal was October 13, 2020. Appellants filed the Appeal on October 7, 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 October 7, 2020, Appellants stated their objections regarding the alleged health effects associated with the proposed WTF. More specifically, Appellants stated that they do not want 5G next to their home—their family lives in a two-story structure (adjacent to the pole) and their young family will be exposed to electrical waves 24/7. Presently, Appellants have five (5) grandchildren that are 16, 10, 8, 5 years old and an infant who is 6 months old.

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

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

1. **Appellants’ Evidence**

During the WebEx virtual hearing on November 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

\(^2\)“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.
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 and to Appellants’ address on record. The package also included a Proof of Service that the electronic copy was transmitted to the email addresses of the hearing officer, the Appellants, and the Applicant’s representatives. During the hearing, all parties acknowledged receipt of the City’s submission package.

During the hearing, Appellants affirmed on the record that they had no additional evidence they wished to offer in support of their appeal.

2. The City’s (and Applicant’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:

- October 7, 2020 Appeal Letter to the City of Long Beach from Alfonso Garcia & Catherine Ungos (Respondent’s Group Exhibit, Page 1)
- Verizon’s January 31, 2020 City of Long Beach Application (Respondent’s Group Exhibit, Pages 2-11)
- Verizon Master License Agreement (MLA) (which includes Verizon’s maintenance obligations) (Respondent’s Group Exhibit, Pages 12-106)
- Small Cell Noise Study (Respondent’s Group Exhibit, Pages 107-125)
- Coverage Map - Verizon (Respondent’s Group Exhibit, Page 126)
- Structural Analysis (Respondent’s Group Exhibit, Pages 127-206)

3 The City’s submission package included a copy of Appellants’ letter dated October 7, 2020.
- September 9, 2020 - Approved Application (Respondent’s Group Exhibit, Pages 208-234)
- Tier B Justification (Respondent’s Group Exhibit, Page 235)
- Mailing and Posting Notification (Respondent’s Group Exhibit, Pages 236-244)

The Applicant also conducted a presentation during the hearing that discussed the (1) increasing need for better wireless infrastructure in the City of Long Beach, (2) photo depictions of the existing light pole and proposed WTF, (3) alternative locations for the proposed WTF that were evaluated by Applicant, and (4) health and safety key facts regarding wireless RF technology.

Upon conclusion of Applicant’s presentation, no additional evidence was submitted by the City or Applicant during the hearing, and this hearing officer then closed the evidentiary portion of the appeal.

VII. DISCUSSION

1. Health Concerns

Appellants’ sole issue addressed on their appeal letter relates generally to “health concerns.” (Respondent’s Gr. Ex., p. 1). More specifically, Appellants are concerned with the alleged impact of radio frequency emissions from 5G towers on human health. However, Appellants provided no evidence in support of their concerns regarding the deleterious health effects of the proposed WTF. Furthermore, 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 Wireless Radio Frequency Compliance Evaluation 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. (Respondent’s Gr. Ex., p. 207). There is, therefore, no basis to deny the approved permit for the proposed WTF on the basis of “health concerns.”

VIII. RECOMMENDATION

Appellants are credible witnesses. This hearing officer has no reason to doubt the veracity and sincerity of Appellants’ statements in either their appeal letter or during the formal hearing. However, inasmuch as Appellants’ concerns and grievances warrant serious consideration, Appellants have otherwise offered no legal basis or relevant evidence in support of their 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 reviews and plan 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.

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

Dated this 15th day of December 2020

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