

To City Council Members, Planning Commissioners and Staff,

The city attorneys have drafted a wireless ordinance that unnecessarily benefits applicants and exposes our residential community to cell tower proliferation. This is deeply concerning as it does not provide the tools to the Planning Commission to assure that cell towers are the least invasive to the public-rights-of ways in the neighborhoods of Carmel-by-the-Sea. We hope it's deeply concerning to yourselves as well. This is particularly distressing after the citizens submitted a draft wireless ordinance that provides those protections and meets state and federal wireless laws. The legal team who drafted the ordinance and the staff who recommended it, did not even comment on the draft we provided. They seemed to have ignored it.

In preparation for the city's update of its wireless ordinance laws, this Spring we retained Andrew Campanelli to write a wireless ordinance that truly protects Carmel, with unified support from residents, who have helped to fund his legal fees. We hope you listen to Andrew Campanelli, the well-regarded telecom attorney we retained, who will speak at the Planning Commission Workshop on September 14th. He has 30 years of telecom law experience and has been successfully admitted to 9 of the 13 Federal Courts of Appeals. He will explain how his drafted ordinance can truly protect a town while complying with state and federal law. And he will be clear that his proposed ordinance is not designed to stop all wireless facilities. Rather, it is designed to give maximum power to decide where they go.

We have taken time to study the city's wireless ordinance draft that the staff submitted to you. Critical items were not included in Section 17.46 of the draft which covers "Wireless Facilities in the Public-Rights-of-Way". ***This section removes the ability for our local government to deny cell towers in the public-rights-of-way affecting the residential zones in the following ways:***

1. **The city draft removes the Planning Commission's authority to make factual determinations in the public-rights-of-ways necessary to make legal denials and replaces it with the sole discretion of city staff.** The state of California offers Planning Commission Boards this important legal authority to evaluate evidentiary standards that negatively impact their communities. California preserves this local right to cities so that they may preserve their aesthetic and environmental assets, historic resources, zoning laws, protect the public welfare, property values and the health and safety of its citizens. The city draft replaces

the Planning Commission's legal authority with a staff issued administrative permit without a Planning Commission hearing. This is the same staff that recommended the cell tower abomination on Carmelo, which was vehemently opposed by the public, and whose decision was opposite the decision of the Planning Commission and the City Council. A city administrative staff decision would be less likely to be held up in a court of law.

2. **The city draft does not require telecom applicants to prove that a new cell tower is necessary to cover a service gap in the area.** The city draft does not require the applicant to provide significant burdens of proof including **drop call data** or **drive test data** to **reasonably demonstrate a significant gap** of service in the area. There is no requirement for the applicant to meet evidentiary standards of significant service gap to get a preemption from code requirements to apply for an encroachment permit in the city. Telecom applicants should not be able to claim there is an effective prohibition if significant coverage gaps do not exist, and less invasive options are available.
3. **The city draft does not require telecom applicants to provide evidence to determine whether a less invasive alternative location exists** to provide service without locating a cell tower in a residential zone. This critical **alternative location standard** must be exhausted by the applicant as a least intrusive means standard, AND they also must prove there is a significant gap in service in the area in the first place. To make permit evaluations, the city must **require applicants to submit connectivity maps of all existing facilities in the area** that are available for collocation in including mountain tops up to 30 miles away as equally equivalent providers have done to provide service. *Again, "Residential areas must be prohibited absent proof of effective prohibition: significant coverage gaps and no less invasive options".*
4. **The city draft lacks enforcement of its ordered lists of "preferred" and "discouraged" cell tower locations in the public-rights-of ways in the residential zones** *by not requiring applicants to submit burdens of proof of significant gap coverage, by not requiring evidence of alternative less invasive locations and by removing the planning commission board to make factual determinations* which would require telecom applicants to comply with these locations.

5. **The city draft removes the authority to deny cell towers based on aesthetics by outlining acceptable design aesthetics.** The Ninth Circuit in the City of Portland case vacated the FCC aesthetic rules. Outlining acceptable aesthetics is not required or in the city's best interests. Aesthetic judgements about cell tower design must be determined by the Planning Commission on a case-by-case basis and be subjective, which is a specific legal authority reserved to California cities by state law.
6. **The city draft closes the door to public hearings creating a less open, less informative and less transparent decision-making process.** The Planning Commission must be able to walk the proposed cell tower location as well as tour individual properties upon request to evaluate impact and to make factual determinations. The public must be allowed to give testimony to the Planning Commission at a public hearing as to the ways in which a cell tower location affects their life.
7. **The city draft weakens our residential zoning laws** (1) By increasing the height restriction on antennas in the residential zones to accommodate wireless facilities and; (2) By weakening our residential zoning language from "prohibited" to "discouraged". *Again, "Residential areas must be prohibited absent proof of effective prohibition: significant coverage gaps and no less invasive options"*
8. **The city draft gives the sole power of decision making to "The Director" in the public-rights-of-ways in the residential zones.** The Planning Commission's ability to make factual determinations is essentially removed along with the important public hearing process. The established process to preserve the community character and quality of life for the residents is heavily eviscerated. "The Director" is given the right to take the role of 'czar'. No one in this community wants that, you should not want that, and he/she should not want that. It is not fitting to Carmel culture.
9. **The city draft was sent without application checklists. What is contemplated for the checklist should be included in the ordinance as an important part of the permit decision process. It should not sit outside the ordinance.** We await to read what powers it vests the Director versus the Planning Commission.

10. **The city draft limits the public's ability to challenge "The Director's Decision"** by only allowing individuals to appeal his/her authority within a deadline of 7 days.
11. **The city draft encourages pre-application meetings with telecom applicants to help them with their submissions.** This provision is not required and not in the city's best interest.

Like many of you, we are not attorneys. We offer these comments as dedicated and concerned citizens. Notwithstanding our disappointment that our voice has so far not been heard, we remain available to constructively engage with the City Council, the Planning Commission and Staff in seeing that our City is property protected.

Respectfully,

Stop Cell Towers in Carmel Neighborhoods

"Residents for cell service in the least invasive means possible to our residential neighborhoods"