

**DRAFT**

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE xxxx**

**ORDINANCE TO ADD ARTICLE 15 “WIRELESS COMMUNICATION FACILITIES ON DISTRICT TIDELANDS” TO THE SAN DIEGO UNIFIED PORT DISTRICT CODE**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, Wireless Communication Facilities (WCF) are the equipment and supporting structures used to provide wireless service; and

**WHEREAS**, WCF can take a range of forms, from large scale towers, purpose-built to support numerous facilities, to small scale facilities often incorporated into or attached onto existing structures, such as streetlights; and

**WHEREAS**, regulation of the placement of WCF is principally a local matter; however, although federal and state law expressly recognize local regulatory authority over siting, they do impose some significant procedural and substantive limits on local authority; and

**WHEREAS**, on December 9, 2014, by Resolution No. 2014-227, the BPC adopted BPC Policy No. 772 – Guidelines for Conducting Project Consistency Review for Wireless Communication Facilities (Wireless Guidelines); and

**WHEREAS**, the Wireless Guidelines set out high-level objectives and policies regarding WCF on District tidelands, recognizing the importance of WCF in providing reliable wireless service while also determining that it was essential to maintain the high aesthetic and environmental qualities of tidelands, while ensuring that WCF do not conflict with the other users and uses of the District; and

**WHEREAS**, recent changes in law necessitate adoption of more robust WCF application requirements, procedures, and design standards; and

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**WHEREAS**, recent advancements in wireless technology, namely fifth-generation technology or “5G”, is being rapidly deployed by carriers seeking to improve their network coverage and capacity; and

**WHEREAS**, 5G capable WCF are often deployed as facilities known as “small cells”; and

**WHEREAS**, the District has received an influx of applications and inquiries from carriers proposing the installation of small cells on tidelands, with dozens of potential sites across tidelands for future installations; and

**WHEREAS**, additionally, there are a number of existing WCF on tidelands for which the District receives regular applications for maintenance and modification; and

**WHEREAS**, the increase in recent inquiries for the construction of WCF on tidelands, in conjunction with the existing WCF and anticipated future applications for construction of WCF, warrants adoption of procedures and substantive standards that establish clear guidance for the design, siting, permitting, operation, and modification of WCF (WCF Standards); and

**WHEREAS**, the District, as trustee of public tidelands and important coastal resources, is obligated to ensure public enjoyment of tidelands and coastal resources while protecting such resources; and

**WHEREAS**, pursuant to the Public Trust Doctrine, the District exercises the proprietary public trust responsibilities delegated to it consistent with the Port Act; and

**WHEREAS**, the standards would improve transparency and certainty for applicants and staff, increase efficiency of permitting processes, and ensure WCF are appropriately designed and sited to minimize potential aesthetic and environmental issues, as well as minimize any potential conflict with other uses, users of tidelands, and obligations under the Coastal Act and Public Trust Doctrine; and

**WHEREAS**, the District’s adoption of WCF standards will also allow more effective and efficient compliance with applicable state and federal law; and

**WHEREAS**, the ordinance, which amends the San Diego Unified Port District Port Code (Port Code), adds procedural and substantive standards applicable to WCFs; and

**WHEREAS**, the principles/design standards outlined in the WCF Standards – particularly (1) the requirements for stealth design (integration and

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concealment to minimize aesthetic impacts), and (2) locational restrictions intended to minimize adverse impacts from WCF construction – are intended to be protective of valuable coastal resources, to the extent possible, and ensure the orderly construction of WCF on tidelands; and

**WHEREAS**, the draft standards were circulated for review to a variety of stakeholders, including California Coastal Commission (CCC) staff, the wireless providers who inquired about deploying small cells on tidelands, the Port Tenants Association, and the District’s Member Cities; and

**WHEREAS**, District staff engaged the wireless providers throughout the year-plus drafting process, actively soliciting comments and input on the various drafts provided to them; and

**WHEREAS**, adoption of the WCF Standards, which will ensure compliance with applicable law and orderly and proper installation of WCF on tidelands in a manner that minimizes aesthetic and environmental impacts to the maximum extent possible while also reflecting the unique obligations of the Coastal Act and Public Trust Doctrine (including protection of valuable coastal resources and preservation of public access and enjoyment of the tidelands); and

**WHEREAS**, District staff recommends that the BPC adopt an ordinance amending the Port Code to add standards regarding WCF; and

**WHEREAS**, no direct fiscal impact to the District would result from the Port Code amendment.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District do ordain as follows:

Section 1. That the San Diego Unified Port District Port Code is hereby amended to add Article 15 with procedural and substantive standards applicable to WCFs, to read as follows:

## ARTICLE 15

### WIRELESS COMMUNICATION FACILITIES

#### **SECTION NO. 15.01 – TITLE**

The title of this Article shall be known as “Regulation of Wireless Communication Facilities on District Tidelands.”

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**SECTION NO. 15.02 - PURPOSE**

The purpose of this Article is to establish standards for managing, processing, and acting upon requests for the placement and modification of wireless communication facilities (“WCF”) on District Tidelands. Nothing in this Article shall be construed to limit or otherwise abridge, to any extent, the District’s exercise of its authority (1) as a property owner, trustee, and/or landlord and in a proprietary capacity for the benefit of the public pursuant to the San Diego Unified Port District Act (“Port Act”), (2) as a trustee of District Tidelands, which are subject to the California Public Trust Doctrine (“Public Trust”) (and any other trust obligations), and (3) subject to the requirements of the California Coastal Act, the District’s Coastal Development Permit Regulations, and any other applicable law requiring the protection of natural and coastal resources. This Article does not, expressly or impliedly, expand the scope or applicability of any federal law, state law, or Federal Communication Commission (“FCC”) orders or rules (including, as applicable, the shot clock timeframes established by 47 CFR § 1.6003). The District reserves its right to exercise all rights, authority, and discretion when acting in its proprietary, market-participant, and/or landlord capacity.

The District’s Tidelands are a uniquely valuable public resource, closely linked with the character of San Diego Bay, and regulation of WCF installation on District Tidelands is necessary to protect and preserve coastal resources, including aesthetics, physical and visual public access, and sensitive biological resources, as well as implement and adhere to the Public Trust and Coastal

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Act. This Article is protective of the public health, safety and welfare, and provides for the orderly deployment of wireless communications facilities through reasonable and appropriate standards to ensure the continued quality of telecommunications services to the public and private entities, while protecting the unique resources and character of District Tidelands, implementation of the Coastal Act and other regulations regarding the preservation of coastal resources, and aiding in furtherance of public access and use of District Tidelands. This Article does not apply to any (1) government-owned and operated WCF, (2) emergency medical care provider-owned and operated WCF, or (3) any WCF that are exempted pursuant to applicable federal or state law. The Article shall not be construed to require or mandate any action that would be inconsistent with applicable federal or state law, including the Coastal Act.

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**SECTION NO. 15.03 - DEFINITIONS**

For purposes of this article, certain words and phrases not otherwise defined in District Code section 0.03 shall be defined as follows:

- (a) “Base station” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(1), as may be amended, which defines the term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Section 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time an application is filed with the District under this Article, supports or houses equipment described in 47 C.F.R. Sections 1.6100(b)(1)(i) and (ii) that has been reviewed and approved by the District, even if

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the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time an application is filed with the District under this Article, does not support or house equipment described in 47 C.F.R. Sections 1.6100(b)(1)(i) and (ii).

(b) “Board or BPC” means the Board of Port Commissioners of the District.

(c) “Collocation”

1. For the purposes of any Spectrum Act Section 6409(a) modification (Eligible Facilities Request (EFR)), the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC's definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location.

2. For all other purposes, the same as defined in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended, which defines “collocation” as: (1) mounting or installing an

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antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

- (d) “District Tidelands” means those lands, including the PROW, granted to and held, controlled, or operated by the District, as trustee, pursuant to and consistent with the Port Act
- (e) “Eligible Facilities Request” means the same as in 47 CFR 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and involves (1) the collocation of new transmission equipment, (2) the removal of transmission equipment, or (3) the replacement of transmission equipment.
- (f) “Historic Structure” means a historic structure as designated by the National Register of Historic Places, the California Register of Historical Resources, and/or any applicable local register.
- (g) “Public Right of Way or PROW” means a public street, highway, sidewalk associated with a public street or highway, street island, median or parkway, that is owned, operated, or controlled by the District. PROW does not include Promenades, Piers, Parks, or other accessible public lands held in trust and managed for the benefit of the public pursuant to the Port Act, as may or may not be designated in the Port Master Plan.



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- (h) “Sensitive Habitat Area” means any area in which plant or animal life or their habitats are either rare and/or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.
- (i) “Small Cell Wireless Facility” means consistent with the definition in 47 CFR 1.6002(l), a facility that meets each of the following conditions:
1. The facility:
    - a) is mounted on structures fifty (50) feet or less in height including their antennas; or
    - b) is mounted on structures no more than ten percent (10%) taller than other adjacent structures; or
    - c) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater.
  2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR Section 1.1320(d)), is no more than three (3) cubic feet in volume;

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3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume;
  4. The facility does not require antenna structure registration under 47 CFR Part 17;
  5. The facility is not located on tribal lands, as defined under 36 CFR Section 800.16(x); and
  6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR Section 1.1307(b).
- (j) “Stealth Facility” means a WCF that utilizes concealment techniques that substantively screen the WCF from public view or integrate the WCF with the surrounding natural or built environment such that, given the particular context visual detection of the WCF by the average, untrained observer is difficult.
- (k) “Structure” means an element, facility, or equipment which is attached to, constructed on, or built into the ground, either directly or indirectly. This term includes, without limitation,

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buildings, streetlights, traffic signals, utility poles, signage and art installations.

- (l) “Tower” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(9), as may be amended, which defines the term as any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
- (m) “Wireless Communication Facility or WCF” means the transmitters, antennas, remote radio units (RRUs) support structures, and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), base station(s), and any other accessory equipment related to the provision of wireless service. Wireless Communication Facility includes a Small Cell Wireless Facility.

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**SECTION NO. 15.04 – APPLICATION PROCEDURES**

- (a) Application Requirements.
1. Application Process: Any applicant proposing to locate a WCF on District Tidelands shall submit a wireless-specific application. The submission of an application and the District's consideration of same shall in no way limit or otherwise abridge, to any extent, the District's exercise of its authority as a property owner, trustee, and/or landlord and in a proprietary capacity for the benefit of the public pursuant to the Port Act.
  2. Content: Any application for a WCF must contain, subject to Section 15.04(a)4 below, at a minimum:
    - a) Any information required by Board of Port Commissioners Policy No. 357, as amended.
    - b) The name of the applicant, its telephone number and contact information, and the name and contact information of any wireless service provider that will be using the WCF.
    - c) The name of the owner and/or master lessee, as applicable, of the structure or property on which the WCF will be located, and written owner and/or master lessee authorization for

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use of the structure or property for the proposed WCF.

- d) If located on District Tidelands that are subject to an existing leasehold, a copy of the proposed real estate agreement (with confidential or proprietary information redacted, as approved by the District) between the applicant and the master lessee(s) of the property on which the proposed WCF is proposed to be located, attached, or installed.
- e) A complete description of the proposed WCF and all work that will be required to install, modify, maintain, or allow functioning of the WCF, including, but not limited to: (a) detail regarding proposed excavations, if any; (b) detailed site plans showing the location of the WCF, and dimensioned drawings with specifications for each element of the WCF, clearly describing the site and any and all structures and/or facilities both (b1) at the site before installation or modification of the WCF and (b2) after the installation or modification of the facilities; (c) a dimensioned map identifying,

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describing, and depicting the location of existing structures within one hundred (100) feet, in all directions, of the proposed WCF, and identifying any residential dwelling unit(s) and/or any historical structure(s) within three hundred (300) feet, in all directions regardless of jurisdictional boundaries, of the WCF, unless the application is for an EFR; (d) before and after scaled photo simulations that depict the proposed location prior to and following the proposed installation; (e) details related to the infrastructure, facilities, and other equipment to be installed; and (f) existing and proposed (by applicant) property lines and distances from associated boundaries.

- f) A description of and documentation demonstrating that the proposed WCF will comply with generally-applicable health and safety standards of the Port Code, regulations and standards of the associated member-city jurisdiction, as may be applicable, and FCC rules and standards, including radio frequency emissions standards.

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- g) All manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, including the equipment decibel ratings for both maintenance cycling and continual operation modes. If the manufacturer's specifications or other information suggest that noise generated by the proposed WCF would exceed applicable noise standards of the city within which the WCF is proposed (City of San Diego, City of Chula Vista, City of Coronado, City of National City, or City of Imperial Beach), a noise memo or study confirming compliance with applicable standards and/or demonstrating the maximum noise output for the WCF. If an applicant has prepared and submitted a noise study for a specific WCF design, a subsequent noise study is not required for the exact same design (inclusive of all components and technical features).
- h) If the application is for a Small Cell Wireless Facility, the application shall state as such and

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explain how the proposed WCF meets the definition of Small Cell Wireless Facility.

- i) If the application is for an EFR, consistent with applicable law, the application shall state such expressly and must contain information sufficient to demonstrate that the application qualifies as an EFR, consistent with applicable law.
- j) Any application for a WCF that either (1) is proposed to be located in a Tier 2 or Tier 3 Location or (2) which seeks an exception pursuant to Section 15.05(l), below, must include (a) a minimum of two (2) alternative designs and/or locations for each proposed WCF, and (b) a map identifying the search area used by the applicant to identify the proposed location (a "Search Ring"), unless the application is for an EFR.
- k) Any required fees, as per BPC Policy No. 106, Cost Recovery User Policy, as amended. If the applicant has questions regarding applicable fees, the applicant should reach out to the District's Development Services Department.



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3. Application Fees: The payment of applicable application fees shall in no way be construed to guarantee approval of any specific proposed WCF or otherwise constrain the District, as landlord operating in its proprietary capacity, to the extent applicable, from requiring rent or other fees consistent with applicable leasing procedures and standards of the District or the Port Act.
4. Waiver:
  - a) An applicant may request a waiver from any of the submittal requirements specified in this Section, provided that such request shall be made in writing and at the time that the application is submitted. The Executive Director (or his or her designee) may grant or deny a request for a waiver, in his or her sole discretion, provided that any approval of a waiver must be accompanied by a finding that, notwithstanding the issuance of a waiver, the District will have sufficient information regarding the proposed WCF to understand the nature of construction and installation proposed by the project. All waivers approved pursuant to this subsection shall be narrowly tailored to minimize deviation

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from the requirements of this Article and shall apply only to the specific project identified.

- b) Requests for waivers of cost recovery fees under BPC Policy No. 106 are not covered by this subsection and a request for a waiver of any fees under that policy would need to be requested and approved in accordance with that policy.

(b) Design Standards.

- 1. Any application submitted to construct a WCF shall adhere to and be designed consistent with the Design Standards, as outlined in Section 15.05, unless the application is an EFR or an exception is requested and approved according to Section 15.05(I). All applicants shall, to the extent feasible, design a WCF to be a Stealth Facility.

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**SECTION NO. 15.05 – DESIGN STANDARDS**

All WCF, except for an EFR, shall be designed in the least visible means feasible and to be the least disruptive to the appearance of the primary use on a parcel as feasible. A WCF, except for an EFR, shall be a Stealth Facility and utilize the smallest, least visually intrusive design to minimize visual impacts. All WCF, except for an EFR, must be compatible with proposed support structure and surroundings, including with respect to color, materials, size, and scale, and shall use all reasonable means to hide and conceal the WCF through design integration and screening. The District retains all discretion to determine that a proposed WCF does not satisfy the requirements of this Section, except as may be limited by federal or state law (such as an EFR).

(a) Locations.

1. Recognizing the unique visual and aesthetic value of District Tidelands, the District prioritizes the location of WCF in certain locations, as specified below and ranked in order of preference (with Tier 1 Location being the most preferred and Tier 3 being the least preferred). To the extent a proposed location falls within two or more tiers, the more restrictive tier will be deemed to apply. However, a proposal for the location of a WCF in a specific location, whether a Tier 1 Location or otherwise, does not constitute a guarantee of approval and all proposed WCF must comply with the requirements of

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this Article. If an applicant proposes to locate a WCF in a Tier 2 Location or Tier 3 Location (as defined below), except for an EFR, the applicant must submit evidence (such as a map or figures) demonstrating why no preferred tier locations (as characterized below) in the applicant's target service area are feasible as a location for the proposed WCF.

a) Tier 1 Locations:

- 1) PROW in wholly commercial or industrial areas.
- 2) Within existing buildings or located on the roof of an existing building, provided the WCF is not visible from publicly accessible areas, regardless of location within any other less preferred tier.
- 3) All locations not identified as a Tier 2 Location or a Tier 3 Location.

b) Tier 2 Locations:

- 1) Within one hundred and fifty (150) feet, in any direction, of any Historic Structure.
- 2) Any Parks, open spaces, or areas of recreation, as may or may not be

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designated in the certified Port Master Plan.

- 3) Areas of Piers that are used for wholly for commercial or industrial purposes, provided that the WCF does not obstruct or impede views of San Diego Bay or the Pacific Ocean.
- 4) Any undeveloped District Tidelands.
- 5) Any area between the first inland PROW paralleling San Diego Bay and San Diego Bay or paralleling the Pacific Ocean and the Pacific Ocean.
- 6) All locations that would result in an adverse impact to coastal resources, other than those identified as Tier 3 Locations as per Section 15.05(a)1(c).

c) Tier 3 Locations:

- 1) Within a View Corridor or Vista Area, as designated in the certified Port Master Plan.
- 2) Within thirty (30) feet, in any direction, of any Promenade, unless substantially

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screened from view from the Promenade.

- 3) Promenades, as may be designated in the certified Port Master Plan.
  - 4) Piers, including but not limited to Fishing Piers as designated in the certified Port Master Plan.
  - 5) Within one-hundred (100) feet, in any direction, of any Sensitive Habitat Areas or adjacent areas where siting would degrade those areas or resources.
- (b) Size. Any WCF shall be the smallest size feasible.
- (c) Stealth. To effectively avoid or minimize visual clutter and intrusiveness, WCF shall be stealth to the extent feasible.
1. The following principles aid in designing a Stealth Facility:
    - a) WCF shall match the color, texture, materials, and aesthetics of the structure to which they are attached or mounted.
    - b) WCF shall prioritize integration into or concealment within a structure, as opposed to visible mounting or land-based construction that

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relies on screening and/or construction of a new structure.

- c) If constructed on or attached to a building façade, WCF shall be integrated into architectural elements (appearing flush within a wall or hiding in a cupola). The design elements of existing building facades should be replicated.
  - d) Whenever feasible, a WCF shall be placed on existing structures or replacement structures.
  - e) All cabling shall be concealed and routed internally through the existing structure.
  - f) All proposed vertical elements of the WCF shall replicate the design, diameter, and proportion of the vertical element to be imitated when aiding with concealment.
  - g) WCF should not materially obstruct views from, or light passage into, any adjacent window(s).
- (d) Undergrounding. All WCF equipment must be integrated or concealed to the maximum extent possible, consistent with the requirements in (c)(1) of this Section. If undergrounding is technically feasible and would be necessary to achieve a Stealth

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Facility design, WCF equipment must be placed underground. All vaults and pull boxes shall be installed flush to grade.

1. If required, ground-mounted equipment shall be stealth and incorporate camouflaging and shrouding to match the colors, appearance, and materials of existing facilities and screen equipment from public view. Further, any ground-mounted equipment must be enclosed in cabinets, sized only for the necessary equipment and camouflaged using paint that matches the surrounding environment.
- (e) Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, graffiti, and vandalism.
- (f) Safety. All WCF, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW; impede the flow of vehicular, bicycle, or pedestrian traffic; impair the primary use and purpose of poles, signs, and traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the PROW or property. Further, all WCF and associated equipment shall comply with applicable Americans with Disabilities Act requirements.



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- (g) Noise. WCF and all accessory equipment and transmission equipment must comply with all the noise regulations of the city in which the WCF will be constructed.
- (h) Lighting. No WCF (that is not a light pole) shall have illumination unless specially required by the Federal Aviation Administration or other government agency. Any required lighting shall be shielded to eliminate impacts on the surrounding areas and sensitive biological resources.
- (i) Signs. No WCF may display any signage or advertisement unless it is expressly allowed by this Section or required by law or a permit condition. Every WCF shall at all times discretely display signage that accurately identifies the WCF owner and provides the owner's unique site number and a local or toll-free telephone number to contact the WCF owner's operations center.
- (j) Landscaping. In addition to any landscaping proposed by the applicant for concealment or screening purposes, the applicant shall repair and/or replace any existing landscaping displaced during construction or installation of the applicant's WCF. The applicant's landscaping plan shall be subject to the District's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.

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(k) Pole-Mounted WCF. Any pole-mounted WCF must comply with the following standards, in addition to the requirements and standards identified above:

1. WCF on Existing Poles:

- a) Stealth. The WCF should be a Stealth Facility.
- b) Antennas and RRUs. Antennas and RRUs shall be integrated in the least visually intrusive manner.
- c) Dimensions. Each antenna shall be of the smallest size technically feasible, but in no case more than three (3) cubic feet in volume.
  - 1) A pole-top WCF, including shroud, shall be of the smallest size technically feasible, but in no case more than eighty-four (84) inches in height and twenty (20) inches in diameter.
  - 2) All side-mounted WCFs shall be of the smallest size technically feasible and shall not project from the pole more than twelve (12) inches.
- d) Cables and Wiring. All cables and wiring must be within the pole. If location within the pole is not feasible, all cables and wiring must be within

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the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

2. Replacement Poles. If an applicant proposes or is required to install a replacement pole to accommodate the proposed WCF:

- a) Placement. A replacement pole must be installed in the same location as the pole that it is replacing or as close to the original location as feasible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.
- b) Design. A replacement pole should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced to the greatest extent feasible. A replacement pole for a WCF can exceed the height, diameter, and proportion of an original pole, up to a maximum of 10 (ten) percent to the extent needed to feasibly integrate antennas, accessory equipment, and interior cabling and wiring. If the exceedance would be greater than 10 (ten) percent, a replacement pole with WCF

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components mounted to the exterior may be proposed.

- c) Cables and Wiring. All cables and wiring must be concealed within the structure.
- d) Stealth. The WCF, inclusive of the replacement pole, should be a Stealth Facility.
- e) If the WCF proposes a replacement pole with components of the WCF mounted to the exterior of the pole, the provisions of Section 15.05(k)1 shall apply.

### 3. New (Non-Replacement) Poles.

- a) Exception Required. New poles are prohibited, unless an exception is approved by the District.
- b) Design. A new pole shall have a maximum height of thirty-five (35) feet, including WCF, and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
- c) New wooden poles are prohibited.

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- d) Cables and Wiring. All cables and wiring must be concealed within the pole.
  - e) Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base.
  - f) Stealth. The WCF must be a Stealth Facility.
- (l) General Orders. All installations shall comply with applicable California Public Utilities Commission (“CPUC”) General Orders, including, but not limited to General Order 95. None of the design standards are meant to conflict with or cause a violation of CPUC General Orders. Accordingly, project consistency with this code may be evaluated on a case-by-case basis if it is demonstrated that deviation is necessary to ensure compliance with CPUC rules on safety.
- (m) Exception
1. The Executive Director (or his or her designee) may, at his or her sole discretion and consistent with the criteria below and the requirements of this Article, grant an exception in any of the following circumstances:
    - a) If an applicant demonstrates to the District, in writing that the applicant is unable to propose a project that complies with specific identified requirements of this Article, and denial of an application would, within the meaning of federal

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law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All exceptions approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of these design standards are waived only to the minimum extent required to avoid the prohibition or violation; or

- b) If an applicant demonstrates to the District, in writing, with evidence set forth in a feasibility study that (1) compliance with a requirement of Section 15.05(e)–(k), above, would be technically infeasible, (2) the proposed WCF complies with the requirements of these design standards to the greatest extent technically feasible, and (3) the proposed WCF would meet the intent and goals of this Article with respect to protection of coastal resources (including aesthetics, sensitive biological resources, and visual and physical public access); or
- c) If an applicant demonstrates to the District, in writing, that the particular engineering, design or

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location proposed involves only minor non-compliance, as determined by the District, with a requirement of these design standards but such non-compliance either results in no increase in adverse impacts to coastal resources, the public, other uses and users of tidelands, or provides other benefits. For example, an exception to the WCF location limitations may be granted when the applicant can demonstrate that the placement is less visible from public viewsheds or shielded by vegetation or existing infrastructure (such as barriers or structures), or is less physically intrusive (for example, less impactful to tree roots or reduces noise), or the applicant can demonstrate that in a multi-site deployment, the placement would reduce the overall number of sites needed and be no more visibly or physically intrusive than placement in accordance with the WCF location criteria; or

- d) For new non-replacement poles, if the applicant demonstrates to the District in writing that the design better achieves “stealth” design and

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consistency with the intent and standards of the Design Standards than use of existing or replacement infrastructure. The applicant must submit evidence of existing infrastructure within the applicant's target placement area and describe why alternatives to the new non-replacement pole are not feasible or why the use of the proposed non-replacement structure better achieves "stealth" design.

1. Among other factors, in deciding whether or not to grant an exception, the District may consider the impact of future expansions to the WCF that the applicant or other party may be entitled to make as of right if granted.
2. Any exceptions must be requested in writing. The request must include both the specific Section(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the District has deemed an application complete constitutes a material change to the proposed WCF and shall be considered a new application. A request for exception from one or more requirements of this Article does not relieve the



XXXX

applicant from compliance with all other applicable provisions of law or of the District's regulations.

XXXX

**SECTION NO. 15.06 – GENERAL REQUIREMENTS**

- (a) All WCF shall use flat-rate electric service or other method that removes the need for a separate above-grade electric meter. If flat-rate service is not available, applicants should install a stealth smart meter. Any separate ground-mounted electric meter pedestals are discouraged.
- (b) All WCF are required to have a disconnect switch, which should be mounted and treated to match the existing design.

XXXX

**SECTION NO. 15.07 – LEGAL NON-CONFORMING WCF**

A WCF that was lawfully constructed, erected, or approved before the effective date of this Article, provided such WCF secured all necessary approvals, real estate agreements, and permits from applicable agencies, and that is operating in compliance with all applicable laws, and which facility does not conform to the requirements of this Article shall be deemed a legal non-conforming WCF.

XXXX

**SECTION NO. 15.08 – REMOVAL**

Any operator of a WCF that intends to abandon or discontinue use of a WCF must notify the District, in writing, as per the real estate agreement for the WCF or, if there is no real estate agreement, written notification shall be provided no less than thirty (30) days prior to such abandonment or discontinuance of use. The operator shall have ninety (90) days from the date of abandonment or discontinuance of use, commencing from the District's receipt of the written notification, or a reasonable amount of additional time as may be approved by the District, to (1) obtain necessary permits to remove the WCF, complete removal of WCF and restore the site to its original condition or as otherwise specified by the District, (2) obtain necessary approvals and real estate agreements to transfer the rights to use the WCF to another telecom operator or owner, or (3) continue to use the WCF. If an operator of a WCF fails to remove a WCF, as may be required by this Section or their real estate agreement, the District may remove the WCF at the operator's sole cost and such operator shall be liable for the entire cost of removal, repair, restoration, and storage (if any) associated with the WCF.

XXXX

**SECTION NO. 15.09 – DENIAL**

If an applicant submits a complete application to the District, complying with all requirements outlined in 15.04(a), the District's denial of any complete application will be in writing and comply with applicable law.

*(Amended \_\_\_\_\_, 2022 – Ordinance No. XXXX)*

Section 2. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

\_\_\_\_\_  
By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12<sup>th</sup> day of April 2022, by the following vote: