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6 **CITY OF LONG BEACH**
7 **ADMINISTRATIVE APPEAL HEARING**
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 **KIMIA KHATAMI and ANN TODD,**

10 **Appellants,**

11 **vs.**

12 **CITY OF LONG BEACH,**

13 **Respondent/Permitting**
14 **Authority**

15 **LOS ANGELES SMSA LIMITED**
16 **PARTNERSHIP, d/b/a VERIZON**
17 **WIRELESS,**

18 **Real Party in Interest /**
19 **Permit Applicant**

) **HEARING OFFICER’S FINDINGS AND**
) **RECOMMENDATION**

20
21 **I. INTRODUCTION**

22 This appeal came on regularly for hearing before Administrative Hearing Officer
23 Jonathan C. Navarro on February 9, 2022 at 10:00 AM via WebEx virtual hearing. The WebEx
24 hearing was administered by Damitria Williams with the Public Works Department (“PWD”) for
25 the City of Long Beach. The Appellants, Kimia Khatami and Ann Todd (“Appellants” or
26 “Appellant”), appeared *pro se*. The City of Long Beach (“City” or “Respondent”) appeared and
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HEARING OFFICER’S FINDINGS AND RECOMMENDATION

1 was represented by Erin Weesner-McKinley, Esq. with the Office of the City Attorney for the
2 City of Long Beach. Applicant Los Angeles SMSA Limited Partnership, D/B/A Verizon
3 Wireless (“Verizon” or “Applicant”) appeared and was represented mainly by Daisy Uy
4 Kimpang. The following also appeared for the Applicant: Michelle Brower, Michelle Brown,
5 Barbara Breeden, Mario De La Mora, Charaka Wijeweera, Bill Hammett, Ahsley Kleis, and Erin
6 Knight. The PWD for the City of Long Beach was represented by Daniel Ramirez and Pablo
7 Leon. No member of the public appeared during the appeal hearing.
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9 **II. STATEMENT OF FACTS**

10 The facts in this matter are not in dispute. On or around November 3, 2020, Verizon
11 submitted an application (“Application”) for a permit to the City for the installation of a “small
12 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s
13 Group Exhibit, pages 14-23). The Application process is governed by Chapter 15.34 of the Long
14 Beach Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs
15 in the public right-of-way to ensure that the proposed WTF complies with said requirements and
16 standards. WTF means equipment installed for the purpose of providing wireless transmission
17 of voice, data, images, or other information including but not limited to, cellular telephone
18 service, personal communications services, and paging services, consisting of equipment,
19 antennas, and network components such as towers, utility poles, transmitters, base stations,
20 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include
21 radio or television broadcast facilities, nor radio communications systems for government or
22 emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public
23 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto
24 which is either owned, operated, or controlled by the City, or is subject to an easement or
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1 dedication to the City, or is a privately-owned area within City’s jurisdiction which is not yet
2 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map
3 approved by the City. LBMC 15.34.020.S.

4 The Application sought a permit for the installation of a proposed WTF in the public
5 right-of-way in front of the property located at 3240 E. 10th Street, which is in a residential
6 zoning district and is located at the intersection of 10th Street and Coronado Avenue. The
7 proposed WTF will be integrated into a new light pole at the site that is designated as “SCL
8 LONG BCH 67” in the Application (“Site”). The top of the existing light pole is thirty-two (32)
9 feet and two (2) inches high and the top of the existing luminaire is thirty-four (34) feet and ten
10 (10) inches high. (Respondent’s Gr. Ex., pp. 255-256, 273). The replacement light pole would be
11 thirty-two (32) feet and nine (9) inches high and the center of the reused salvaged luminaire would
12 be thirty-four (34) feet and six (6) inches high. (Id.). Three integrated antennas will be placed at the
13 top of the pole, with the bottom of the antennas twenty-seven (27) feet and eight (8) inches from
14 the ground. (Respondent’s Gr. Ex., pp. 255-256, 273). Two (2) pull boxes for fiber and power
15 will be placed adjacent to the pole with all associated cables routed inside the pole. (Id.).

16 Upon two (2) subsequent rounds of reviews and plan revisions—the latest being June 21,
17 2021—the City approved the Application on August 5, 2021. (See approval stamp on
18 Respondent’s Gr. Ex., pp. 248-276). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
19 approval was mailed out on August 18, 2021, and a posted notice was placed on the pole in front
20 of Appellants’ homes and at the Site on August 20, 2021. (See Respondent’s Gr. Ex., pp. 278-
21 282 [proof of mailing]; Respondent’s Gr. Ex., pp. 283-287 [proofs of posting]). Said posted
22 notice triggered the commencement of the 10-day appeal period under LBMC 15.34.030.L. The
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1 deadline for filing an appeal was September 3, 2021. Appellants timely filed their Appeals on
2 August 23 and 24, 2021 via e-mail and regular mail. (See Respondent's Gr. Ex., pp. 1-13).

3 **III. LEGAL AUTHORITY FOR APPEAL**

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

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7 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
8 Permit, and/or any person owning or residing at property that is adjacent to
9 or across the street to the location of a proposed Tier B Wireless
10 Telecommunications Facility, may appeal an approval or denial of an
11 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal
12 must be in writing and must be submitted to the City Clerk within ten (10)
13 business days of the date the notice was mailed and posted as required under
14 Subsection 15.34.030.K.2, above.
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16 2. Public Hearing Required. If an appeal is timely submitted, an independent
17 hearing officer selected by the City shall hold a public hearing. The City
18 Clerk shall set a date for the hearing that is at least fifteen (15) business
19 days, but no more than sixty (60) business days, after the City Clerk's receipt
20 of the appeal, unless the applicant and any person submitting an appeal agree
21 to a later hearing date.
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23 3. Notice of Public Hearing Date. At least ten (10) business days before the
24 public hearing, the City Clerk shall notify in writing any person submitting
25 an appeal, the applicant, and any City department that reviewed the
26 application of the date set for the public hearing. The City Clerk shall follow
27 its regular procedures for notifying the general public of the hearing.
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29 4. Public Hearing Record. The public hearing record shall include:
 - 30 a. The application and the Department of Public Works' approval of the
31 application;
 - 32 b. Any written determination from the Department of Public Works;
 - 33 c. Any further written evidence from any City departments submitted either
34 prior to or during the hearing;
 - 35 d. Any written submissions from the applicant, any person submitting an
36 appeal, or any other interested person submitted either prior to or during
37 the hearing; and

1 e. Any oral testimony from any City departments, the applicant, any person
2 submitting a protest, or any interested person taken during the hearing.

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

9 6. Notice of Determination on Appeal.

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

17 **IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**

18 **FACILITIES**

19 **1. Federal and State Laws and Regulations**

20 In 1996, Congress conducted a major overhaul of the telecommunications law in almost
21 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let
22 anyone enter any communications business—to let any communications business compete in any
23 market against any other. The Federal Communications Commission (“FCC”) was then tasked
24 to create fair rules for this new era of competition. The advent of the newest generation of
25 wireless broadband technology known as “5G” requires the installation of thousands of “small
26 cell” wireless facilities. These facilities have become subject to a wide variety of local
27 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
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1 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
2 the installation and management of small cell facilities, including the manner in which local
3 governments can regulate them. Id. Sections 253(a) and 332(c)(7) of the Act provided FCC with
4 the statutory authority for limiting local regulation on the deployment of [5G] technology that
5 reflects congressional intent in 1996 to expand deployment of wireless services. Id. at p. 30.

6 These limitations provide that local government regulations:

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- 8 a. shall not unreasonably discriminate among providers of functionally equivalent
9 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
 - 10 b. shall not prohibit or have the effect of prohibiting the provision of personal
11 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
 - 12 c. a local government ... shall act on any request for authorization to place,
13 construct, or modify personal wireless service facilities within a reasonable period
14 of time after the request is duly filed with such government¹. 47 U.S.C. §
15 332(c)(7)(B)(ii).
 - 16 d. No State or local government or instrumentality thereof may regulate the
17 placement, construction, and modification of personal wireless service facilities
18 on the basis of the environmental effects of radio frequency emissions to the
19 extent that such facilities comply with the Commission's regulations concerning
20 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).
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26 ¹ The FCC has specifically shortened the shot clock for approving/denying applications for installation
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing
Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).

1 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
2 have the effect of prohibiting” any entity from providing telecommunications services. *Id. See*
3 *also* 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
4 governments in regulating the deployment of 5G technology in order to remove the barriers to
5 entry for businesses to compete in the telecommunications market.
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7 California case law and statutory authorities provide additional regulatory guidance for
8 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
9 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
10 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
11 Court held that while the California legislature did not intend to deprive local governments of
12 the ability to impose aesthetic regulations and public safety issues, local agencies must
13 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
14 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
15 preempt local decisions about specific sites “when there is a clear conflict with the
16 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
17 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)
18 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
19 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
20 citing General Order 159A, at p. 3.).
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24 **2. The City’s Telecom Ordinance**

25 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
26 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs
27 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
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1 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
2 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
3 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
4 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
5 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
6 and the appeal process of a Tier B² WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
7 also provides for, among others, compliance and modifications, of WTFs after installation
8 (LBMC 15.34.030.N; LBMC 15.34.030.S).

10 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

11 By their email and letters dated August 23 and 24, 2021 respectively, Appellants raise
12 health concerns that the proposed WTF poses in relation to its RF emissions. Appellants assert
13 that in light of a recent decision out of the District of Columbia, *Environmental Health Trust v.*
14 *Federal Communications Commission*, 9 F.4th 893 (D.C. Cir. Aug. 13, 2021), “the FCC is
15 required to review its safety standards” and that “[n]ew construction should be halted or deferred
16 to the court’s ruling coming forth in [the near future].” Appellants argue that there are dire risks
17 from over-reliance on wireless technology, and cite the weakness and fallibility of cellular
18 systems, as well as the harm that will come from explosions when the diesel fuel-containing
19 generators powering small cells go up in flames. Appellants also point out a significant
20 population that has developed cancer or other ailments as a result of [RF] exposure wish to be
21 left alone and to exclude involuntary irradiation in their own homes, and that individuals who
22 have developed electromagnetic related illnesses experience adverse health effects when exposed
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27 ² “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
Protected Location, or Zoning Protected Location.

1 to wireless radiation—“exposure makes them sick and often exacerbates other underlying
2 conditions.” These illnesses, Appellant assert, [are] a disability under the ADA and a handicap
3 under the FHA, and that proposed rule [sic] will violate disabled individuals’ legal rights under
4 various federal and state laws that protect disabled and handicapped individuals from
5 discrimination and ensure access to housing. Appellants also urge that an ordinance be adopted
6 to prevent, among other things, “property devaluation due to landowners’ concerns re health,
7 environment, and aesthetics.”
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9 Upon receipt of Appellants’ email and letters, the Long Beach City Clerk’s office then
10 scheduled a formal hearing with regard to Appellants’ objections.
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12 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

13 **1. Appellants’ Evidence**

14 During the WebEx virtual hearing on February 9, 2022, this hearing officer explained to
15 all the participants the guidelines for the hearing. These include examination of witnesses and
16 presentation of evidence. It was stated on the record that the hearing officer received the City’s
17 submission package³ in advance of the hearing both in hardcopy and electronic format. The
18 hardcopy was received at this hearing officer’s business address and included a Proof of Service
19 indicating that the hardcopy was sent to said business address and to Appellants’ address on
20 record. The package also included a Proof of Service that the electronic copy was transmitted to
21 the email addresses of the hearing officer, the Appellants, and the Applicant’s representatives.
22 During the hearing, all parties acknowledged receipt of the City’s submission package.
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27 ³ The City’s submission package included a copy of Appellants’ e-mail and letters dated August
28 23 and 24, 2021.

1 In addition to their email and letter of appeals, Appellants discussed several items on the
2 record during the hearing. However, Appellants did concede during the hearing that the City had
3 a legal basis in approving the Application under the applicable municipal codes. Notwithstanding
4 Appellants' concession of the Application's legal basis, Appellants made additional inquiries
5 during the hearing relating to specific technical information about the proposed WTF (i.e.,
6 dimensions, locations, distances to adjacent structures, alternative locations), as well as potential
7 harmful effects of electromagnetic signals. Insofar as Appellants' questions during the hearing
8 were not factual allegations or legal arguments for the purposes of the appeal, those questions are
9 not within the purview of this hearing officer's inquiry and determination. Nonetheless, the City
10 and Applicant were able to address and provide specific answers to Appellants' questions.

13 **2. The City's (and Applicant's) Evidence**

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

- 16 • Appeal email communication and letter to the City of Long Beach from Ann Todd
17 dated August 24, 2021 (Respondent's Group Exhibit Pages 000001-000009)
- 18 • Appeal Letter to the City of Long Beach from Kimia Khatami dated August 24, 2021
19 (Respondent's Group Exhibit Pages 000010-000013)
- 20 • Verizon's November 3, 2020 City of Long Beach Application (Respondent's Group
21 Exhibit Pages 000014-000023)
- 22 • Verizon Master License Agreement (MLA) (which includes Verizon's maintenance
23 obligations) (Respondent's Group Exhibit Pages 000024-000119)
- 24 • Small Cell Noise Study (Respondent's Group Exhibit Pages 000120-000138)
- 25 • Coverage Map – Verizon (Respondent's Group Exhibit Page 000139)
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- 1 • Structural Analysis (Respondent’s Group Exhibit Pages 000140-000240)
- 2 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter and study dated
- 3 March 19, 2021 (Respondent’s Group Exhibit Pages 000241-000247)
- 4 • August 5, 2021 – Approved Application (Respondent’s Group Exhibit Pages
- 5 000248-000276)
- 6 • Tier B Justification (Respondent’s Group Exhibit Page 000277)
- 7 • Mailing and Posting Notification (Respondent’s Group Exhibit Pages 000278-
- 8 000287)
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10 On February 7, 2022, Applicant’s counsel submitted a letter to the City in support of the
11 permit approval and in opposition to the appeal. The letter was forwarded by PWD to this
12 hearing officer as well as to all interested parties to the appeal. In addition to the arguments
13 brought forth by Applicant’s counsel in the February 7, 2022 letter, attached thereto was a
14 Master RF Exposure Study that was conducted by Hammett & Edison, Inc., a Consulting
15 Engineering company retained by Applicant to evaluate its small cell deployment in Long Beach,
16 California for compliance purposes. The Master Study contained a summary of radio-frequency
17 exposure conditions of antenna(s) and radio(s). In addition to the February 7, 2022 letter, the
18 Applicant also conducted a presentation during the hearing that discussed the (1) increasing need
19 for better wireless infrastructure in the City of Long Beach, (2) photo depictions of the existing
20 light pole and proposed WTF, (3) alternative locations for the proposed WTF that were evaluated
21 by Applicant, and (4) health and safety key facts regarding wireless RF technology. During the
22 hearing, the Applicant also provided Appellants answers to their specific questions relating to
23 orientation, dimensions, and distances to and from the proposed WTF, as well as varying effects
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1 of human exposure to radio frequency and the electromagnetic spectrum in general, vis-à-vis,
2 non-ionizing v. ionizing radiation.

3 Upon conclusion of Applicant’s presentation, no additional evidence was submitted by
4 the City or Applicant during the hearing, and this hearing officer then closed the evidentiary
5 portion of the appeal. Appellants were then provided until February 11, 2022 to submit
6 additional arguments in reply to the materials that were submitted and presented by Applicant
7 during the hearing.
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9 **VII. DISCUSSION**

10 **1. Health Concerns**

11 Appellants’ main issue addressed on their email and letters relates generally to “health
12 concerns.” (Respondent’s Gr. Ex., pp. 000001-000013). More specifically, Appellants’ concerns
13 relate to the alleged impact of radio frequency emissions on human health. However, aside from
14 anecdotal evidence cited by Appellants in their email and letters, Appellants did not submit any
15 other relevant evidence in support of this issue prior to or during the hearing. Upon review and
16 consideration of Appellants’ argument and evidence relating to health concerns, this hearing
17 officer finds that Appellants’ argument regarding this issue is unavailing.
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20 Appellants assert that in light of a recent decision out of the District of Columbia,
21 *Environmental Health Trust v. Federal Communications Commission*, 9 F.4th 893 (D.C. Cir.
22 Aug. 13, 2021), “the FCC is required to review its safety standards” and that “[n]ew construction
23 should be halted or deferred to the court’s ruling coming forth in [the near future],” and thus
24 current FCC guidelines do not adequately protect health and the environment. However,
25 Appellants reliance on this court opinion is misplaced. In *Environmental Health Trust*, the D.C.
26 Circuit Court found that the FCC’s decision not to revisit its 1996 limits on RF exposure was
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1 “arbitrary and capricious” under the federal Administrative Procedure Act (APA) because the
2 agency did not provide a “reasoned explanation,” relying instead on three “conclusory”
3 statements from the FDA attesting to a review of the scientific evidence and determination that
4 there was no established link with health problems at certain exposure levels. The Court then
5 remanded the case to the FCC to (i) provide a reasoned explanation for its decision to retain its
6 testing procedures for determining whether cell phones and other portable electronic devices
7 comply with its guidelines, (ii) address the impacts of RF radiation on children, the health
8 implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other
9 technological developments that have occurred since the [FCC] last updated its guidelines, and
10 (iii) address the impacts of RF radiation on the environment. Notwithstanding the Court’s
11 decision to remand the case to the FCC, the Court, however, did not conclude that RF emissions
12 from mobile and other wireless devices are unsafe and hazardous, and emphasized that “[t]o be
13 clear, we take no position in the scientific debate regarding the health and environmental effects
14 of RF radiation—we merely conclude that the [FCC’s] cursory analysis of material record
15 evidence was insufficient as a matter of law. However, the Court was also careful to explain that
16 RF radiation is “non-ionizing” and distinct from “ionizing radiation” (also called “radioactivity”)
17 that can damage tissue, and found the FCC’s determination that exposure to RF radiation at
18 levels below current exposure limits does not cause cancer was not “arbitrary or capricious.”
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22 In addition, the City’s regulatory authority in this regard is limited and preempted by
23 federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or instrumentality
24 thereof may regulate the placement, construction, and modification of personal wireless service
25 facilities on the basis of the environmental effects of radio frequency emissions to the extent that
26 such facilities comply with the [FCC]’s regulations concerning such emissions.) The Applicant’s
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1 submission of a Radio Frequency Compliance Evaluation and Master RF Exposure Study
2 demonstrating that the emissions from the proposed WTF is within general population and
3 occupational limits established by the FCC for radio frequency emissions complies with FCC
4 regulations. [See Applicant’s submission prior to hearing; See also Radio Frequency
5 Electromagnetic Fields Exposure Analysis Letter and Study dated March 19, 2021 (Respondent’s
6 Gr. Ex., pp. 000241-000247); See also Small Cell Noise Study (Respondent’s Gr. Ex., pp.
7 000120-000138)]. There is, therefore, no basis to deny the approved permit for the proposed
8 WTF on the basis of “health concerns.”

10 **2. ADA and FHA**

11 Related to health concerns is Appellant Khatami’s assertion that electromagnetic related
12 illnesses [are] a disability under the ADA and a handicap under the FHA, and that proposed rule
13 [sic] will violate disabled individuals’ legal rights under various federal and state laws that
14 protect disabled and handicapped individuals from discrimination and ensure access to housing.
15 (Respondent’s Gr. Ex., p. 000012). However, this bare assertion was not substantiated by either
16 facts or legal authorities. Therefore, without more, this hearing officer is unable to determine
17 whether the approval of the Application runs afoul of ADA and FHA regulations.

20 **3. Safety Concerns**

21 Appellant Khatami also mentions in her appeal letter concerns regarding a potential
22 safety hazard attendant to the proposed WTF. More specifically, Appellant Khatami asserts that
23 5G poses extreme fire hazards because small cells are powered by diesel-fueled backup
24 generators. (Respondent’s Gr. Ex., pp. 000011-000012.). However, Applicant has made it clear
25 on the record—in the Application and during the appeal hearing—that the proposed WTF
26 installation does not include a diesel-fueled backup generator. The City has also confirmed on
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1 the record that it does not permit a diesel fueled backup generator to be installed at any small cell
2 site. There are, therefore, no safety concerns attendant to the proposed WTF with regard to
3 diesel-fueled backup generators.

4 **4. Property Values**

5 Appellants' also urge that an ordinance be adopted to prevent, among other things,
6 "property devaluation due to landowners' concerns re health, environment, and aesthetics." (See
7 Respondent's Gr. Ex., p. 000011). Appellants submitted no evidentiary support on the impact of
8 WTFs on residential property values, or more specifically, the impact on the value of their
9 residential property. Notwithstanding the lack of evidentiary support for Appellants' argument
10 with regard to "property devaluation," the Telecom Ordinance is silent with regard to property
11 values and does not factor this criterion in evaluating WTF installations. LBMC 15.34.030.
12 Consequently, the Telecom Ordinance does not vest in this hearing officer the authority to
13 consider property values in determining whether to deny or uphold the approved permit.
14

15 **VIII. RECOMMENDATION**

16 Appellants are credible witnesses. This hearing officer has no reason to doubt the
17 veracity and sincerity of Appellants' statements in either their appeal letter(s) or during the
18 formal hearing. However, inasmuch as Appellants' concerns and grievances warrant serious
19 consideration, Appellants have otherwise offered no legal basis or relevant evidence in support
20 of their appeal. In contrast, the City submitted a comprehensive package in opposition to the
21 appeal that included its brief and supporting legal authorities and relevant evidence. The City's
22 evidence included all the materials and documentation that the Applicant submitted to the City
23 as part of the application process. After two (2) rounds of plan review and revisions, the City
24 determined that the Applicant's proposed WTF met all the applicable requirements and
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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 Appellants' appeal be denied and that Applicant's permit for the proposed WTF be upheld.

Dated this 25th day of February, 2022

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