

4/26/22

Steve Marshall
City of Novato Planning Division
922 Machin Avenue
Novato, CA 94947

cc: Novato Planning Division: Brett Walker, Vivek Damadoran
cc: Novato City Council members: Eric Lucan, Susan Wernick, Pat Eklund, Denise Athas, Mark Milberg
cc: Novato City Manager: Adam McGill
cc: Novato Community Development Department Director: Vicki Parker
cc: Novato City Clerk: Laura McDowall
cc: Piper Perreault, Paul McGavin Wire Novato

City clerk: in order to achieve crucially necessary transparency of governance, please responsibly ensure that this email/letter and all communications pertaining to the WTF applications listed below be placed in the corresponding Public Record files to assure transparency.

- File No. P2022-022; APN 141-013-22: ADJACENT TO 1553 SOUTH NOVATO BLVD
- File No. P2022-021; APN 140-071-48: ADJACENT TO 7123 REDWOOD BLVD.
- File No. P2022-023; APN 132-113-16: ON NOVATO BLVD. BEHIND 10 PICO VISTA AVE.
- File No. P2022-024; APN 151-061-06: ADJACENT TO 625 ARTHUR ST.

Dear Mr. Marshall,

I am a Novato resident, and part of a group called Wire Novato (wireNovato.org). My comments in this letter are on behalf of the group.

On April 13, 2022, Mr. McGavin wrote an email/letter to the City of Novato Planning Department with questions about the review process of the AT&T applications for four so-called “small” Wireless Telecommunications Facilities in Novato. Because the term ‘small’ is inappropriate in terms of generated radiation and in terms of direct medical harm, I will sometimes use the phrase Wireless Telecommunications Facilities and the corresponding acronym, WTF, in this correspondence. On April 13, 2022, you responded to Mr. McGavin’s email/letter, but did not answer all of his reasonable questions. Both of those letters are included in Appendix A.

Mr. McGavin shared both Apr 13 letters with Wire Novato and told us that it would be most appropriate for Wire Novato to respond to your Apr 13 letter, as our group is comprised of Novato residents, many of whom will be adversely affected by the proposed AT&T WTFs.

On April 8, 2022, Piper Perreault also submitted a letter to your department which has not yet been answered. See that letter in Appendix B.

We are seeking timely and thorough answers to the following questions, some from the April 9 and April 13 letters and others from the Novato residents who are joining Wire Novato, after they received the flyers we distributed in the neighborhoods, starting on Sat April 9.

1. Why has the Planning Division essentially not made public these four proposed AT&T applications February 25 to the present? Why are no signs posted on the target poles, why are no application files posted on the City's web site, and why have no notices been mailed? Other cities in California are more transparent, including, but not limited to Palo Alto, Sonoma, Petaluma and Santa Rosa, which places a dot on an online map, as soon as an application arrives. The longer the City of Novato waits to send out notice to the most immediately affected residents, the more severe will be the violation of the Due Process rights of those residents from the City's continuing failure to comply with Novato's own Ordinance.
2. Open transparency includes swiftly notifying the public on Novato.org, notifying via letter all residents and businesses, and property owners within 600ft. of each proposed installation, and working with the public on this issue, the outcome of which will significantly impact people's families, public safety, privacy, and property values.
3. Given that Ordinance 1654 says "the Director will act on the application without a public hearing, but will for a minimum of ten (10) days from the date of the notice accept written public comments that evaluate the application for compliance with the standards in this Ordinance" we need assurances from the City of Novato that any person's **first amendment rights** to redress grievances to their government will **not be restricted by time frame or by content**. Will the City of Novato please confirm that this letter and all letters from Wire Novato and other interested persons regarding these WTF applications will be **accepted, read and considered** by the Planning Department in its deliberations on these applications?
4. We ask that the city planners review the items we have identified in Appendix C that AT&T must include in their applications according to the ordinance, and then send additional letters requiring AT&T to fulfill these requirements before their applications will be deemed complete. Considering the huge potential for harm for residents and liability for the city these installations would create, a full exploration and review of current local, state, and federal regulations and guidelines by the Planning Division is essential. It is clear this has not been done because the checklist used to determine application completeness is lacking essential documentation AT&T needs to produce.

Importantly, there is no law that prevents the City of Novato from sending additional publicly available letters seeking more detailed information to the applicant to ensure compliance with local, state, and federal laws. If it is the position in Planning that there is some law which prohibits such urging such compliance from such companies, or prohibits disclosure of such correspondence, please identify any such applicable prohibitory law. Any such probatory policy, in compromise of public access to public records and process would prevent the people of Novato from being able to thoroughly

review these applications and require the missing and essential pieces of information that will allow the City to make fully informed decisions.

1. Given that Section 4(C) *Required Findings* of Ordinance 1654 does not include all requirements specified in local state and federal laws for this project, please **accept, read and consider findings** that are not on this insufficient list of just seven items in its deliberations on these applications.

6. Ordinance 1654 states that the city can hire attorney at the applicant's expense. Section 5A16: **Cost Reimbursement.** "The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses . . . including engineers', **attorneys'**, or technical consultants' fees and costs incurred by the City in connection with the permittee's request; . . ."

1. Please immediately publish to the **City of Novato's website the full contents of each application file**, making it easy for anyone to access and read this content.

Failure to Timely Notice the Public

Regarding the first question, we recognize that Ordinance 1654 does not specify when the Planning Division has to notice residents which is one of the many weaknesses in the outdated Ord. 1654 that must be addressed and changed by the City Council. Clearly, WTFs with insufficiently regulated maximum power output will be a great nuisance to Novato residents who live near these proposed sites, ruining their quiet enjoyment of streets (and homes), the protection of which is clearly under the authority of the City of Novato, per the 2019 CA Supreme Court ruling in Metro PCS vs California which says:

" . . . the City has inherent local police power to determine the appropriate uses of land within its jurisdiction. That power includes the authority to establish aesthetic conditions for land use the word " 'incommoded' means '[t]o give inconvenience to; to give trouble to; to disturb or molest in the quiet enjoyment of something, or in the facility of acquisition.' " . . . Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel . . . For example, lines or equipment **might generate noise, cause negative health consequences, or create safety concerns. All these impacts could disturb public road use, or disturb its quiet enjoyment.**"

In your April 13 response to Mr. McGavin, you state that the Planning Department intends to send public notices "*10 days prior to the date set for action on the given small cell use permit.*" These should have been sent **out at the time the City of Novato first received the applications?** The public needs to know as soon as possible about any infrastructure that would ruin the quiet enjoyment of their streets (and homes) and that would diminish their public safety, privacy and property values, in violation of the CA constitution:

*California Constitution, Article I Declaration of Rights, Section 1 "All people are by nature free and independent and have inalienable rights. Among these are **enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.**"*

The public has limited time to comment on and appeal the decisions on these applications, due to the 60-day shot clock which has now decremented to 50 days. For that reason, **we are asking the City Council to give the Novato Planning Dept. clear direction to immediately mail out notices to those within 600 feet of the proposed WTF sites** consistent with Ord. 1654. From the public's perspective, these notices are already **significantly past due**.

In your April 13 letter you stated: *"Notices will be mailed to an occupant where the Assessor's records indicate an absentee property owner. The applicant for a small cell use permit will pay for the staff time and postage required to prepare and mail the notices. The Planning Division will not rely on an applicant to prepare the mailing labels contrary to the noticing provision in Ordinance No. 1654."*

It may make logistical sense that the Novato Planning Dept. can ensure accurate noticing as it regularly performs the same type of noticing for many other permit processes and actions, but per Ordinance 1654, **the applicant** is required to comply with the noticing provision. If they have not, they are out of compliance, and should be told so by the Planning Division, and their applications should remain incomplete for that reason.

Also in your Apr 13 letter, you stated: *"All of AT&T's applications are incomplete as of March 7, 2022."* That is true. **But there are many more incomplete items other than those listed in the March 7 letters.** These additional items need to be addressed in additional letters that must be sent to the applicant as soon as possible. We list the additional incomplete items in Appendix C.

Ord.1654 Section 4(C) is Not Comprehensive

In your April 13 letter, you stated *"The Planning Division assesses small cell use permits on the basis of the criteria and findings of Ordinance No. 1654."* The City of Novato, of course, must follow all state and federal laws in the process, including but not limited to the 1996 Telecommunications Act (1996-TCA), the National Environmental Policy Act (NEPA), the Fair Housing Amendments Act (FHAA) the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), none of which is specified in Section 4(C) *Required Findings* of Ord. 1654. **Therefore, the seven items listed in Section 4(C) cannot be the only things considered by the Planning Department when deliberating on these applications.**

So when you stated in your Apr 13 letter: *"Staff will consider all evidence specifically relevant to the question of compliance with the criteria and findings.[in Section 4(C)]"* – that statement is clearly insufficient. The City has the duties and obligations to deliver actual public safety to its residents and to protect residents from the unconstitutional taking of their public safety, privacy and property values under the City's police powers as granted to it by the State constitution.

In addition, there are applicable criteria and findings in the City of Novato's codified municipal code DIVISION 19.38 – WIRELESS TELECOMMUNICATIONS FACILITIES. Recall that both City of Novato Ordinances (DIVISION 19.38 – WIRELESS TELECOMMUNICATIONS FACILITIES from 2012 and CITY COUNCIL OF THE CITY OF NOVATO ORDINANCE NO. 1654 from 2018) are relevant and must be considered in your deliberations on these four AT&T sWTF applications, because the U.S. Court of Appeals Aug 2019 ruling in Keetoowah et al. v FCC vacated Title 47 CFR Section 1.1312(e)(2). As a result every small WTF must now be treated as every other Wireless Telecommunications Facility, just as the FCC does.

Applicable Health and Safety Regulations

In your April 13 letter, you stated: “*Staff will receive support from a wireless telecommunications consultant to assist in verifying compliance with the criteria and findings of Ordinance No. 1654 that are of a technical nature, such as compliance with applicable health and safety regulations.*” For accuracy, we need to clarify the following:

The FCC RF microwave radiation guideline, selected in 1996 by the FCC, combining existing guidelines from the IEEE, ANSI and the NCRP are not “health and safety regulations”, but merely a commercial guideline. **The FCC has no expertise in health and that has been fully recognized by the DC Circuit judges in the Aug 13, 2021 ruling which irrevocably changed the wireless world:**

The DC Circuit judges ruled the following in Case 20-1025:

“ . . . we grant the petitions in part and remand to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radio-frequency [microwave] radiation. It must, in particular,

(i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines,

(ii) address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, and

(iii) address the impacts of RF radiation on the environment.”

The City of Novato also received substantial evidence in the public comment from **Theodora Scarato, Executive Director of the Environmental Health Trust** and plaintiff in Case 20-1025, EHT/CHD v FCC. In her public comment on **Apr 12, 2022 in City Hall Chambers** via Zoom. Ms Scarato said:

“the FCC ignored the scientific evidence on the record, over 10,000 pages of evidence that show harms for wireless radiation and ordered the FCC to respond and address issues of children’s vulnerability as well as long-term exposure . . . these limits are not scientifically defensible based on any review of the totality of the science . . . although we might assume that federal regulatory agencies with health expertise, such as . . . the EPA, FDA or CDC are monitoring and reviewing the latest science about RF microwave radiation from cell tower exposures, they are not. Full stop . . . many communities are establishing setbacks to protect residential neighborhoods . . . New Hampshire has a state bill that proposed a 1,640 foot setback for any Wireless Telecommunications Facility installation.”

The 11,000+ pages of evidence already in the City of Novato’s public record concludes that Wireless radio frequency microwave radiation is bioactive and is currently being insufficiently regulated. Therefore, each state or locality can use its police powers to regulate the maximum power output of microwave radiation from wireless infrastructure antennas that reaches any areas that are accessible to human beings and other living

organisms, consistent with the 11,000+ pages of peer-reviewed, scientific evidence that Environmental Health Trust and Children’s Health Defense and other plaintiffs placed in the FCC’s public record. Wire Novato placed this same evidence into the City of Novato public record for these applications on Apr 12, 2022.

Antenna Capability and Effective Radiated Power (ERP)

The Denki Kogyo Model DKOBDYKDP-7M45F antenna that is being proposed for **each of the AT&T WTFs is wholly inappropriate in size and power output for its need:** to provide telecommunications service (i.e. the ability to make an outdoor wireless phone call). All one needs for “5 Bars” on a cell phone is wireless signal strength of -85 dBm (which equates to about 0.1 Watt ERP). ERP = Effective Radiated Power.

The Denki Kogyo Model DKOBDYKDP-7M45F Antenna has the calculated capability of outputting 3,000 Watts ERP, but it is actually engineered to do twice that or 6,000 Watts ERP. It matters little what the applicants “say” are their intentions (to run the antenna at about 2.5% of this capability), they cannot be trusted. According to a top US Telecom Attorney in the US, Andrew Campanelli — <https://youtu.be/UtT6gVH584s?t=1616>

“in my experience, in 90% of the applications I have seen, the applicant has submitted false and misleading information and it is not by mistake.”

Many have tried. Their answers are guarded and vague; they are banking on the fact that eyes glaze over when they talk tech. The residents of Novato, however, know that telecommunications service at the stated radius of 1,000 to 1,200 feet can be provided by a 4” tall antennas, like the ones you see on Wi-Fi routers. That would be sufficient to provide outdoor wireless phone calls.

Denki Kogyo Model DKOBDYKDP-7M45F Antenna

https://www.dkk-na.com/_files/ugd/390516_83389dfce74348c580ce2024b1dc4555.pdf

Frequencies	Qty ports	Max Input Power	Ant. Gain	Power Ratio	Max Effective Radiated Power Capability
1695 - 1880 MHz	2 ports	100 W	8	6.3	100 W x 6.3 x 2 = 1,260 W ERP
1880 - 2180 MHz	2 ports	100 W	8.5	<u>7.1</u>	100 W x 7.1 x 2 = 1,420 W ERP
3400 - 3800 MHz	4 ports	30 W	3	2.0	30 W x 2.0 x 4 = 240 W ERP
5150 - 5925 MHz	2 ports	10 W	6	4.0	10 W x 4.0 x 2 = 80 W ERP
Total Antenna Capability					3,000 Watts ERP

These facts are well documented in the August 13, 2021 in the US Courts of Appeals DC Circuit ruling in Case 20-1025: EHT/CHD v FCC. Victorious plaintiff, which Theodora. Scarato confirmed to the City of Novato, personally, on April 12 2022.

Representatives from CTC Technology and Hammett & Edison are not qualified to make any statements about “health and safety.” they can only make statements about compliance to a commercial guideline, one that has been scientifically established to be unsound and not protective. In short, the City of Novato cannot employ consultants in an attempt to hide behind the scientifically disproven FCC RF microwave radiation exposure guideline any longer. That ended on Aug 13, 2021, with the DC Circuit ruling.

In addition, there are well-documented problems with Hammett & Edison’s CTC Technology's assessments completed for other California cities. Both consultants have clear pro-industry ties and bias despite their claims to be “objective”. The public is gathering evidence in addition to the active complaint against William Hammett for his substandard work in Palo Alto, CA that is already in your public record. You can expect the additional evidence our follow up letters.

We ask again that the city obtain independent expert attorney and RF engineers to fully evaluate these applications and guide the city through this process.

Novato Should Listen to the Nation’s Top Telecom Attorneys

The City of Novato should learn from successful Telecom attorneys

- W. Scott McCollough, Esq. at <https://wireamerica.org/mccollough/>
- Andrew Campanelli, Esq at <https://wireamerica.org/campanelli/>

In your April 13 letter, you stated: “*Staff will receive legal support from the city attorney’s office on matters of compliance with applicable laws.*” In our comments to City Council, and in Ms. Perreault’s letter to your department, we referred the City of Novato to cases that have been successfully litigated and won against the FCC. These were litigated by the top Telecom attorneys in the country. **The City of Novato is bound by the rulings in these cases.**

In your letter, you state: “*If the Planning Division determines a proposed wireless facility is not in compliance with an applicable regulation within the authority of the City then the Community Development Director may take any of the actions listed in Section 4., clause D. – Conditional Approvals; Denials without Prejudice.*”

Denials without prejudice can occur for many reasons other than "an applicable regulation within the authority of the City". For example, there are items within the authority of the FCC, such as the applicant providing **no substantial written evidence** to prove the applicant has completed NEPA review, as they are required to do by the FCC. As you can read here: <https://wireamerica.org/action/nepa-strategies/>

This Feb 20, 2020 statement by Erica Rosenberg and the FCC rules are consistent.

Erica Rosenberg, FCC:

*“If one of those circumstances are met, then an Environmental Assessment is triggered. In other words, **if the RF is above our limits, they need to do an Environmental Assessment.**”*

In FCC Rule §1.1307, it states:

*“Commission actions granting. . . licenses to transmit . . . require the preparation of an **Environmental Assessment (EA)** if exposure to levels of radiofrequency radiation [are] in excess of the [FCC] limits.”*

Then in Table 1 of FCC Rule §1.1307:

*(b)(1) “Evaluation **required** if Non-building-mounted antennas [have] height above ground level to lowest point of antenna **<10 m** and total power of all channels **>1000 W ERP.**”*

Mr. Marshall, where in the application file is the substantial written evidence that the applicant has complete National Environmental Policy Act review, as required by the FCC?

Novato’s Current WTF Application Checklist is Insufficient

In your Apr 13 letter, you stated: *“The Planning Division assesses the completeness of a small cell use permit applications against the submittal items addressed in Ordinance No. 1654 as consolidated and clarified in a separately prepared application checklist. A copy of this checklist is attached.”* This checklist unfortunately is not sufficiently comprehensive.

Wire Novato has studied the checklist and we highlight many items that are missing from this checklist in Appendix C – these items should be added. Nothing prevents the City of Novato from making the checklist more comprehensive. The City must immediately send to AT&T and its agents additional letters that include a full list of incomplete items.

In Conclusion, AT&T’s Applications Rest On Shaky Ground

The entire foundation of AT&T’s applications are built on shaky ground because of the ruling in August, 2021 in Case 20-1025, EHT/CHD v FCC. For this reason alone, the applications should be deemed incomplete and out of compliance.

We look forward to engaging with the City of Novato Planning Dept. to participate in a fully transparent deliberation process with extensive Quality Assurance by the public on the work being done by the City of Novato employees who serve at the pleasure of Novato residents' elected representatives who, in turn, are representing the residents of Novato.

The lives of Novato residents would be significantly and adversely affected if these sWTFs are approved, so the **public needs a full seat at the table** during these deliberations.

Sincerely,

Steve Glanz, on behalf of WireNovato.Org

APPENDIX A

Paul's 4/13/22 email to Steve Marshall AND Marshall's reply email

April 13, 2022

Mr. Steve Marshall <smarshall@novato.org>
Planning Manager
City of Novato
922 Machin Avenue
Novato, CA 94945
415.899.8942

cc: Laura McDowall <lmcdowall@novato.org>, City Clerk
Vicki Parker <vparker@novato.org>, Community Development Director

[City Clerk McDowall, will you please ensure that this email/letter to the City of Novato is placed in the City's Public public record for the following Wireless Telecommunications Facilities (WTFs) applications:

File No. P2022-024; APN 151-061-06: ADJACENT TO 625 ARTHUR ST.
File No. P2022-023; APN 132-113-16: ON NOVATO BLVD. BEHIND 10 PICO VISTA AVE.
File No. P2022-022; APN 141-013-22: ADJACENT TO 1553 SOUTH NOVATO BLVD
File No. P2022-021-9; APN 140-071-48: ADJACENT TO 7123 REDWOOD BLVD.

... and ensure that this email/letter is printed and placed into the paper file for each of these projects? We are requesting that this email/letter and all communications pertaining to these above listed WTF applications be placed in the corresponding Public Record files for Planning Manager Martin's full deliberations on these applications. Thank you for doing so.]

Dear Mr. Marshall,

I am writing to follow up on my phone call to you earlier today requesting timely answers to the following reasonable questions:

Q1: Given that the City of Novato received AT&T's applications for so-called "small" Wireless Telecommunications Facilities (sWTFs) on Feb 25, 2022 and **47 days have elapsed**, on what date will the City of Novato force AT&T to mail notices to the Novato residents and businesses that fall within 600 feet of these proposed locations?

Per CITY COUNCIL OF THE CITY OF NOVATO [ORDINANCE NO. 1654](#)

Section 3. Required Permits and Applications | C. Application Contents | 8. Public Notices. -- The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 4(A). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.

Section 4. Approvals and Denials Notices | A. Public Notice. -- Prior to any approval, conditional approval, or denial, **public notice shall be mailed** to all properties and record owners and occupants of properties within a 600 foot radius of the project site. The notice shall contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Project Planner; (4) a statement that the Director will act on the application without a public hearing, but will for a minimum of ten (10) days from the date of the notice accept written public comments that evaluate the application for compliance with the standards in this Ordinance; and (5) a statement that the FCC requires the City to act on small wireless facility applications, which includes any administrative appeals, within 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.

Q2: What process will you follow to discern the veracity of the evidence -- how will you separate the wheat (substantial evidence) from the chaff (hearsay and false information) -- from the collection of

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evidence placed in the public record by the applicants, residents and other parties? What is your measure for determining if the applications are complete? What will you do if the application are not consistent with all local, state and federal laws, including, but not limited to the 1996 Telecommunications Act (1996-TCA), the National Environmental Policy Act (NEPA), the Fair Housing Amendments Act (FHAA) the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA)?

Per CITY COUNCIL OF THE CITY OF NOVATO [ORDINANCE NO. 1654](#):

D. Conditional Approvals; Denials without Prejudice. Subject to any **applicable federal or California laws**, nothing in this Ordinance is intended to limit the Director's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Ordinance.

I had brief conversations today with both City Clerk McDowall and Community Development Director Parker and learned the following:

1. **Both** City of Novato Ordinances (DIVISION 19.38 – WIRELESS TELCOMMUNICATIONS FACILITIES from 2012 and CITY COUNCIL OF THE CITY OF NOVATO ORDINANCE NO. 1654 from 2018) **are relevant and must be considered in your deliberations** on these four AT&T sWTF applications, because the U.S. Court of Appeals Aug 2019 ruling in Keetoowah et al. v FCC vacated Title 47 CFR Section 1.1312(e)(2), as detailed in Exhibit A. As a result every so-called "small" Wireless Telecommunications Facility (sWTF), must now be treated as every other Wireless Telecommunications Facility (WTF), just as the FCC does.
2. Even though CITY COUNCIL OF THE CITY OF NOVATO ORDINANCE NO. 1654 says "determined appropriate by the Director", which indicates that the Novato Community Development Director is responsible for approving or denying these four AT&T sWTF applications, Ms. Parker indicated to me today that she is delegating that decision to you, Mr. Marshall.
3. While you, Mr. Marshall, will be managing the public record for any evidence submitted to you for these four AT&T sWTF applications and City Clerk McDowall will be managing the public record for any evidence submitted in public comment for these four AT&T sWTF applications, both sets of information will comprise the full public record for these four AT&T sWTF applications and will be the evidence upon which your deliberations must rely.
4. The public has encountered the consultants attached to these four applications, Hammett & Edison (H&E) and CTC Technology (CTC) several times in other CA Cities' deliberations and the public will enter evidence into the public record that shows both consultants have **not** been objective **not** been thorough enough in their previous work in these other cities. The public will determine if that trend continues in Novato with these applications. Please see the complaint filed against Hammett & Edison for his work in Palo Alto in **Appendix B**. Today, I spoke to **both** Angela Smith, Enforcement Analyst for the CA Board for Professional Engineers and to Jeanne Fleming, PhD, the woman who filed the complaint and confirmed **that this complaint is still active**. The public will submit further evidence of substandard work offered previously by H&E and CTC and request that the City of Novato require any work from each of these consultants to be more thorough than what they have offered other cities, in the past. We also recommend that the City consider hiring consultants that are more objective than these gentlemen -- all of which can be charged to the applicant.

Details of AT&T Applications for Four sWTFs too Close to Homes and Schools

From the City of Novato:

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>>> On Tuesday, April 12th, 2022 at 2:42 PM, Brett Walker bwalker@novato.org wrote

Good Afternoon:

1. File No. P2022-022; APN 141-013-22 for 625 Arthur Street: This site is in the Community Facilities land use designation and adjacent to a residential land use/zoning.
2. File No. P2022-023; APN 132-113-16 for 10 Pico Vista/Novato Blvd: This site is immediately adjacent to residential land use/zoning.
3. File No. P2022-022; APN 141-013-22 for 1553 S. Novato Blvd: This site is in the Neighborhood Commercial land use designation and adjacent to a residential land use/zoning.
4. File No. P2022-021; APN for 7123 Redwood Blvd: This site is in the General Commercial land use designation and is approx. 250 feet from the nearest residential land use/zoning.

Supplemented from <https://wirenovato.org/>

AT&T and their agents have applied for 4G/5G so-called "small" Wireless Telecommunications Facilities (sWTFs) in four locations:

- Near 625 Arthur St. — in front of Novato High School; as close as **30 feet** from homes
- 10 Pico Vista Ave. — as close as **30 feet** from homes
- 1553 S. Novato Blvd. — as close as **60 feet** from homes
- 7123 Redwood Blvd. — as close as **250 feet** from homes, but next to medical care facilities

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From: Steve Marshall <smarshall@novato.org>

Date: April 13, 2022 at 6:33 PM

To: Paul McGavin <pmcgavin@wirecalifornia.org>

CC: Laura McDowall <lmcdowall@novato.org>, Vicki Parker <vparker@novato.org>, Brett Walker <bwalker@novato.org>, Vivek Damodaran <vdamodaran@novato.org>

Subject: May I please have timely answers to the following reasonable questions?

Mr. McGavin:

Below are answers to your questions.

The Planning Division will mail a public notice to all property owners and occupants within a 600-foot radius of a proposed small cell wireless facility. The notice will be mailed ten (10) days prior to the date set for action on the given small cell use permit. The Planning Division will generate mailing labels using addresses taken from the Marin County Assessor's property ownership records. Notices will be mailed to an occupant where the Assessor's records indicate an absentee property owner. The applicant for a small cell use permit will pay for the staff time and postage required to prepare and mail the notices. The Planning Division will not rely on an applicant to prepare the mailing labels contrary to the noticing provision in Ordinance No. 1654. The Planning Division is best suited to ensure accurate noticing as it regularly performs the same type of noticing for many other permit processes and actions.

All of AT&T's applications are incomplete as of March 7, 2022. AT&T has not responded to the completeness issues raised by the Planning Division and the applications have remained dormant. Given this circumstance, there is no date certain when an action will be taken by the Planning Division on AT&T's applications. Therefore, it is not possible to specify a date when notices will be mailed by the Planning Division.

The Planning Division assesses small cell use permits on the basis of the criteria and findings of Ordinance No. 1654. Staff will consider all evidence specifically relevant to the question of compliance with the criteria and findings. Staff will receive support from a wireless telecommunications consultant to assist in verifying compliance with the criteria and findings of Ordinance No. 1654 that are of a technical nature, such as compliance with applicable health and safety regulations. Staff will receive legal support from the city attorney's office on matters of compliance with applicable laws.

The Planning Division assesses the completeness of a small cell use permit applications against the submittal items addressed in Ordinance No. 1654 as consolidated and clarified in a separately prepared application checklist. A copy of this checklist is attached.

If the Planning Division determines a proposed wireless facility is not in compliance with an applicable regulation within the authority of the City then the Community Development Director may take any of the actions listed in Section 4., clause D. – Conditional Approvals; Denials without Prejudice.

Senior Planner Brett Walker and Planner II Vivek Damodaran are copied on this email so as to add your email below and this response to the file for each of AT&T's applications.

Sincerely,

Steve Marshall
Planning Manager

Main: (415) 899-8989 | Direct: (415) 899-8942 922 Machin Avenue, Novato, CA 94945

www.novato.org

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Paul's 4/13/22 email to Steve Marshall AND Marshall's reply email

Monday, April 11, 2022

City of Novato Planning Department
922 Machin Avenue
Novato, CA 94945
415/899-8900

Dear Novato Planning Department and City Clerk-

In order to achieve crucially necessary transparency of governance, please responsibly ensure that this email/letter to the City of Novato Public is placed in the public record for the following Wireless Telecommunications Facilities (WTFs) applications:

- File No. P2022-022; APN 141-013-22: ADJACENT TO 1553 SOUTH NOVATO BLVD
- File No. P2022-021; APN 140-071-48: ADJACENT TO 7123 REDWOOD BLVD.
- File No. P2022-023; APN 132-113-16: ON NOVATO BLVD. BEHIND 10 PICO VISTA AVE.
- File No. P2022-024; APN 151-061-06: ADJACENT TO 625 ARTHUR ST.

Please ensure that this letter via email is printed and placed into the paper file for each of these projects. To facilitate this enclosed are six printed copies of this letter. We are requesting that this email/letter and all communications pertaining to these above listed WTF applications be placed in the corresponding Public Record files to assure transparency.

BACKGROUND

Because the term 'small' is inappropriate in terms of generated radiation and in terms of direct medical harm, I will sometimes use the phrase Wireless Telecommunications Facilities and the corresponding acronym, WTF in this correspondence. Thank you for your anticipated cooperation with our efforts to make sure that the residents of the City of Novato are properly informed about what is being done to their long term health. I mention health in the light of the conclusion of the National Toxicology Panel of the U. S. government's National Institutes of Health from its 30 month, \$25 million study demonstrating that there is, in the government's language, "Clear Evidence" that this microwave radiation from these proposed towers is carcinogenic. This statement is consistent with the original findings from the NTP study as announced on May 27, 2016, consistent with the additional Panel statement of March 28, 2018 ("Clear Evidence"), and in the NIH's NTP Final Report of November 3, 2018.

The City of Novato's planning department received four applications from AT&T and their agents, Modus LLC., to install wireless telecommunications facilities in four locations in Novato, each of which is too close to residences. I appreciate Brett, a Novato city planner in charge of reviewing two of these applications, for taking time to meet with me about them on Wednesday, 4/6/22. I look forward to soon meeting with Vivek, the city planner in charge of reviewing the other two applications, to learn what review he has completed (or not) on local, state, and federal regulations that must be met according to the Novato Ordinance no.1654, in order to deem an application for a 'small wireless facility' complete. I did speak with Vivek on the phone on Thursday, 4/7/22, to ask for maps of 600ft radius around each proposed installation and asked him to notify residents within the required notification radius of 600ft immediately about these installation applications.

I reviewed intensively all 29 pages of Novato's Urgency Ordinance no.1654, as well as the current four AT&T WTF applications, each submitted to the City of Novato on February 25,2022 and the March 7, 2022 letters to AT&T and their agents letting them know the applications were incomplete. I conferred with an expert in measuring and mitigating radiation, an attorney whose long term expertise is in scientific proof cases, as well as with Novato residents who are aware of the harm and liability that will follow if these installations are approved.

As of March 7, the shot clock was halted to allow for essential further review. The applications involved are not yet sufficiently complete to allow an informed decision by Novato's leaders as to permit issuance. There are now 50 days left on the shot clock. This means it is of the utmost urgency that the City become fully-informed and updated on applicable science and law.

THE LEGAL REQUIREMENT OF NOTICE

The current City of Novato wireless ordinance states in section 3C 8. titled "Public Notices" that:

"the applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice"

Section 4 of the wireless ordinance states that all those within a radius of 600 feet of the planned sWTF shall receive written notice. When Vivek and I spoke on the phone Thursday morning, April 7, he cited section 4A of the ordinance, where it states that:

"prior to any approval, conditional approval, or denial, public notice shall be mailed to all properties and record owners and occupants of properties within a 600-foot radius of the site".

The apparent current working position in Planning is that the legally required Notice to residents will be sent out only immediately before the hearing for each of the relevant Applications. While the telecommunications companies might prefer that the public have as little advance notice as possible, myself and colleagues urge that the legally required Notice should already have been sent out as required by the Ordinance above, and that the longer the City of Novato waits to send out notice to the most immediately affected residents, the more severe will be the violation of the Due Process rights of those residents from the City's continuing failure to comply with Novato's own Ordinance.

Novato residents need adequate time to learn about the project's benefits and detriments, time to submit substantial written evidence in the record to prove that there is no need for such WTFs in these proposed locations. The City of Novato must make its decision based on only substantial, verified, truthful evidence in the record and not on any unsubstantiated wireless industry information such as RF projections that are not based on actual before and after measurements, such as the prospective optimistic estimates offered by William Hammett. The City of Novato must reject all unverified evidence before making its decision.

Other residents and I have reviewed the March 7 letters to AT&T and its agents regarding what is incomplete in the applications. Brett told me that checklist that he used for the initial review is based on the City of Novato ordinance no. 1654. I have found that the ordinance as well as local, State and federal laws require additional information from AT&T and its agents in order for the applications to be deemed complete. Please note that our local ordinance requires that applications must follow relevant State and federal laws and regulations, which these applications do not.

Many neighbors and friends in Novato, including people concerned about the proposed installation of antenna arrays for the distribution of carcinogenic radiation at Novato High School have helped me to frame the following respectfully submitted questions to the City of Novato:

1. What event will trigger the shot clock to start again?
2. In what date range do you project that trigger will likely fall?
3. When will the City of Novato act to notice the residents who will be directly affected by the RF microwave radiation pollution that will be emitted 24/7 from these sWTFs? The project has been live for 30 days and there has been no notice. This problem needs to be immediately addressed.
4. When will the City of Novato send additional letters to AT&T and their agents to list the additional incomplete items that are missing from your March 7 letters? (please see list of missing items we have identified in Appendix A)
5. Importantly, there is no law that prevents the City of Novato from sending additional publicly available letters seeking more detailed information to the applicant to ensure compliance with local, state, and federal laws. If it is the position in Planning that there is some law which prohibits such urging such compliance from such companies, or prohibits disclosure of such correspondence, please identify any such applicable prohibitory law. Any such probatory policy, in compromise of public access to public records and process would prevent the people of Novato from being able to thoroughly review these applications and require the missing and essential pieces of information that will allow the City to make fully informed decisions.
6. Please refer to the scalding 1,379 page appeal filed in response to an application for a WTF filed in San Francisco in 2019, which exposed so much misstatement by Modus and Hammett that Verizon dropped the application. The appeal can be found at:
<https://www.dropbox.com/s/d47rymnokfcqvas/Appeal%20No.%2019-024%20thru%2019-030%20%40%202298%20Pacific%20Avenue.pdf?dl=0>

Thank you for your prompt answer to my questions and prompt actions to notice the affected Novato residents and to immediately send letters requesting additional information required of AT&T and its agents. There are a number of additional requirements that AT&T and its agents must satisfy in order for these applications to be deemed complete according to Novato ordinance 1654, and we look forward to promptly seeing a follow up letter from the planning department to AT&T and its agents detailing a clear and exhaustive list of those requirements that must be met before a determination can be made.

Sincerely, Piper Perreault

Novato resident

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ITEMS NEEDED FROM AT&T AND NOVATO PLANNING DIVISION

Here are items that are most needed to be included as required by the Novato Wireless Ordinance 1654 and state and federal law:

1. ATT MUST supply stamped, addressed envelopes for all properties and record owners and occupants of properties, until then the applications are incomplete. It is in the ordinance and therefore AT&T's applications cannot be marked complete without this.
2. ATT must include substantial written evidence of NEPA review as required by federal code.
3. For the target search ring of each proposed sWTF, AT&T must provide 12-months of anonymized AT&T completed calls and dropped calls to establish if there is any significant gap in telecommunications coverage – in order to establish if there is a **need** for any of these sWTFs
4. RF Analysis needs to be done, **by an independent professional engineer acceptable to the city**, based on actual peak and average broadband measurements (100 MHz to 10,000 MHz) of RF microwave radiation in each of the target search ring areas and a spectrum analysis to show dBm readings of all licensed and unlicensed frequencies being transmitted into the target search ring search areas -- **this is completely missing**.
5. William Hammet, whose RF compliance reports and acoustic analysis reports were used in all 4 submitted applications, should be considered an unacceptable engineer to the City, as he is currently under investigation by the CA Board for Professional Engineers for making a fraudulent RF analysis for an antenna report prepared in support of Verizon's application to install a WTF in Palo Alto. *See the 2 attached documents detailing the investigation of William Hammet.*
6. Proof of proper grounding and mitigation by a **Professional Engineer** in Electrical matters Each WTF installation must strictly adhere to all City-adopted building, electrical, fire safety and fall-zone codes. All applications must be reviewed and stamped by independent professional engineers that have licenses in each required specialty: structural, electrical and RF microwave radiation; ensure that for each WTF proposed or currently operating in the City, that all five hazards listed Article 90.I(C) of the National Electric Code (NEC) **and conducted emissions (dirty electricity)** are sufficiently mitigated: (1) shock, also known as electrical contact, (2) thermal effects, (3) overcurrent, (4), fault current and (5) overvoltage.
7. A traffic control plan for construction is needed.
8. Please provide supplemental information on the **existing/proposed coverage maps** supporting this application.
 - a. Which AT&T wireless band is this coverage map calculated for?

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- b.** Provide signal coverage maps for **all Verizon wireless bands** (existing & proposed) to be deployed at the proposed site.
 - c.** Identify the **analytical modeling algorithm employed** to prepare the coverage maps, such as Okumura Hata, Cost-231-Hata, ITU-R P.529 ECC33, LongleyRice Irregular Terrain (ITM), or Verizon proprietary software.
 - d.** Provide existing and projected **Best Server Map plots** for sites surrounding the proposed installation site.

- 9. Please provide supplemental information **establishing** the need for the proposed site to address coverage issues that consider:
 - a.** All existing AT&T sites serving the service area proposed for the four installation locations.
 - b.** Each AT&T wireless band [**and channel, selected from the list in Exhibit A, below**], i.e. 700 MHz, 1900 MHz (PCS) & 2100 MHz (AWS) by antenna sector
 - c.** Key Performance Indicator (KPI) network performance data covering 3 or more months of peak/average measurement statistics for:
 - 1. i. Physical Resource Blocks (PRB) download utilization
 - 2. ii. Voice connection failures
 - 3. iii. Number of concurrent users

- 10. Please revise the RF report to **indicate the locations of adjacent cell sites** and indicate if shared responsibilities exist in compliance with all applicable requirements, specifically FCC OET Bulletin 65.

- 11. Provide a **California Fire Code analysis** addressing section 1206 Electrical Energy Storage Systems, and revise plans accordingly to show specific compliance with Fire Code requirements.

- 12. Provide a **California Building Code analysis** addressing sections 508 Mixed Use and Occupancy, 509 Incidental Uses, and 1510.6.3 Type V Construction, and revise plans accordingly showing specific compliance with building code requirements.

**APPENDIX C
ITEMS NEEDED FROM AT&T AND NOVATO PLANNING DIVISION**

Here are additional items that are most needed to be included as required by the Novato Wireless Ordinance 1654 and state and federal law:

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Section 2 Applicability and Definitions. B. Applicability. 2. Special provisions for Eligible Facilities Requests. -all requests for WTFs will be reviewed consistent with the standards required by law. All determinations will be made by the Director.

-The Planning Division process isn't transparent ("Director" means planners for which parts of the process?)

Page 5

Section 2C. Definitions. 10. -"Director means Community Development Director for the city of Novato or the Director's designee."

-Where is that process outlined?

Page 8

Section 3 Required Permits and Applications. B Other Permits And Approvals -"in addition to the small cell use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies..."

- Inspection of public records indicates that this has not yet been evaluated for compliance. The City of Novato must follow all state and federal laws in the process, including but not limited to the 1996 Telecommunications Act (1996-TCA), the National Environmental Policy Act (NEPA), the Fair Housing Amendments Act (FHAA) the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA).

Section 3C Application Contents 2. Application fee

-Planning Division needs to outline the process of fee payment and make transparent to the public.

Section 3C 3. Construction drawings

-drawings were done by Engineer James Burrows of Modus, and engineer Steve Loupe of WMH Corp. (WMH is the consultant, Modus is the applicant)

-These drawings are incomplete, as noted in Novato's incomplete letter to ATT

-They do not include required identification of all structures within 250', nor required identification of all property lines, landscaping, etc.

Section 3C 3. (D) -requires "demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders."

-The Planning Division checklist should have a full explicit description of all of these requirements in the checklist for ATT to complete. They are not listed out on the checklist.

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Section 3C 6. Project Narrative and Justification. “Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (A) whether and why the proposed support is a structure as defined by the FCC I 47 CFR Sec. 1.6002(m) and (B) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 4 (c).”

-AT&T didn't do this.

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Section 3C 7. RF Compliance Report. -“The RF report must be prepared and certified by an RF engineer acceptable to the City.”

-Hammet is under investigation and should not be acceptable. The city has a right to hire another engineer for this purpose. The shot clock does not run while investigation on Hammet happens, even if AT&T has resubmitted the application, because the application is still considered incomplete.

Section 3C 8. Public Notices. “The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 4(A). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.”

-This didn't happen. The application isn't and never will be complete without this and a new letter of incompleteness needs to require this.

Section 3C 12. Acoustic Analysis.

-This was done by Hammet, therefore unacceptable. It needs to be redone.

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Section 3D Requirements for a Duly Filed Application. 1. Submittal Appointment.

“All applications must be submitted to the City at a prescheduled appointment with the Director.

- Inspection of public records indicates that this has not yet been evaluated for compliance. Who submitted the application and with whom did they meet? The application form is not signed or dated by any City employee. Why was the application accepted when AT&T didn't submit payment? How did the shot clock even start when this in-person appointment would have shown incompleteness and should have been refused?

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Section 3H Additional Procedures. “The city council authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants...All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.”

-Were there any additional rules and regulations established? Where is written documentation?

APPENDIX C
ITEMS NEEDED FROM AT&T AND NOVATO PLANNING DIVISION

Section 4 Approvals and Denials: Notices A. Public Notice. “Prior to any approval, conditional approval, or denial, public notice shall be mailed to all properties and record owners and occupants of properties within a 600’ radius of the project site....the notice shall [state] “for a minimum of 10 days from the date of the notice (the director will) accept written public comments that evaluate the application for compliance with the standards in this Ordinance...and that the FCC requires the City to act on small wireless facility applications, which includes any administrative appeals, within 60 days...”

-There is nothing that states that the public won’t be notified until the city planners deem the application complete, nor that would prevent the public from having enough time to evaluate compliance with the ordinance, and the notification would also falsely imply that there are 60 days to make a determination, which by the time the public is notified, would be much less, UNLESS the public had been notified the same day the original application was received, as appears was intended by the requirement of the applicant to include stamped addressed envelopes with the application.

Section 4C Required Findings. “The director may approve or conditionally approve a complete and duly filed application for a small cell permit when the director finds:”

2. “The proposed project would be in the most preferred location provided in section 6B or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500’ would be technically infeasible”

-Why does it say within 500’? What if there is no preferred location within 500’? Where is the explanation of technical infeasibility in AT&T’s application? The application is incomplete without these answers.

6. “The applicant has demonstrated the proposed project will be in compliance with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations and guidelines for human exposure to RF emissions”

-These applicable regulations and guidelines are not listed out in detail on the planning department’s checklist for application completeness, and they need to be to ensure they are checked for.

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Section 5 Standard Conditions of Approval A. General Conditions

7. Adverse Impacts on Other Properties.

“The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue, or unnecessary adverse impacts on nearby properties that may arise from ...installation, operation...”

- The sWTF near 625 Arthur St. is less than 500 feet from a school site. What could be the impacts due to operation near a school or in front of a business, or in front of a home that the public can show as evidence or could be required proof from AT&T that they don’t cause problems?

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Section 5A 15: Landscaping

“The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance, or other work performed by the permittee or at the permittee's direction on or about the site.”

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- Inspection of public records indicates that this has not yet been evaluated for compliance.
Where is the landscape plan for construction disruption?

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Section 5A 16. Cost Reimbursement. -..."the applicant shall be responsible to enter into a cost recovery agreement and reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review...and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility of any kind or nature including engineers', attorneys', or technical consultants' fees and costs incurred by the City in connection with the permittee's request....the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- Given Hammet's misqualification, the hiring of a QUALIFIED engineer (not CTC) must be done before the application is considered complete. This should include site inspections and RF measurements of other currently operating antenna sites in Novato. This hasn't been done yet ever! The other sites could have RF compliance issues among others. Does Novato have cost recovery agreements with AT&T for the other AT&T antennas already in use in Novato? The city could start with a list of all AT&T antennas in Novato and have them assessed by the city's specialist at AT&T's expense.

Section 5A 17. Cooperation with RF Compliance Evaluations. "at no cost to the city...The City may conduct random tests to ensure compliance with the FCC's rules and regulations....In the event that the City determines that permittee is not in compliance with any legal requirements or conditions, the permittee shall be responsible for all costs and expenses incurred by the City in connection with the investigation, enforcement, and/or remediation of such noncompliance."

- This is a conflicting statement. It says there is no cost to the city to check for compliance, but then it states this applies only if found to be out of compliance will permittee at their expense.

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Section 6. Location Requirements B. Location Preferences.

1. Most Preferred locations. -includes all commercial/industrial zones

2. Less Preferred locations. -includes all residential zoning districts on or along roads designated as arterial roads.

3. Least Preferred locations. -includes all residential zoning districts NOT on or along roads designated as arterial roads.

-Two installations are in the least preferred locations (Pico Vista and Arthur). On the letters that city planners wrote to AT&T, the Redwood Blvd. location doesn't say which location it is in in terms of this 3-tier system. The one on Novato Blvd states less preferred, not least preferred, but it is across the street from houses, so it should be least preferred.

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Section 7 Design Standards. A. General Standards. 6. Compliance with Health and Safety Regulations.

“All sWFTs shall be designed, constructed, operated, and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions, the Americans with Disabilities Act, California Building Standards Code and the Novato Municipal Code.

- All of these regulations need to be detailed out so that they can be added to the checklist to verify completeness of the application. The Americans with Disabilities Act, for example, may include regulations about pacemakers and proximity to RF radiation.

Section 7B. Small Wireless Facilities in the Public Right-of-Way. 2. Antennas.

-It's not mentioned in the ordinance, but is this where maximum wattage should be mentioned? Or requirement for antenna to not be capable of exceeding the wattage needed.

Section 7G. Encroachments over Private Property.

-The Pico Vista antenna is to be placed on a streetlight just beyond the fence of a private property. Is that encroachment?



**SMALL WIRELESS FACILITY USE PERMIT
APPLICATION CHECKLIST**

The following checklist specifies the information and documentation required for an application to consider a small cell wireless facility use permit subject to the procedures and standards detailed in City of Novato Ordinance No. 1654 adopted by the Novato City Council on October 8, 2019. This checklist is intended to aid in submitting a complete application to be reviewed by the City of Novato Planning Division. Ordinance No. 1654, which details applicable procedures and standards for small wireless facilities, is attached for reference.

Three (3) sets of submittal items (i.e., plans, descriptions, documentation etc.) shall be included with an application(s).

SUBMITTAL ITEMS	
Forms, Fee, & Authorizations	
<input type="checkbox"/>	<p>Application Form</p> <p>An applicant shall submit a complete, duly filed Planning Division application for Zoning/Planning/Subdivision Action.</p>
<input type="checkbox"/>	<p>Cost Reimbursement & Application Deposit</p> <p>An applicant shall acknowledge and agree that the request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses and shall be responsible to enter into a Cost Recovery Agreement and reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection, and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility of any kind or nature including engineers', attorneys', or technical consultants' fees and costs incurred by the City in connection with the request.</p> <p>An applicant shall submit a processing deposit with the application for a wireless facility. Batched applications must include an individual deposit for each small wireless facility in the batch. The deposit required for the application may not cover all reimbursable costs and in that event the applicant shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs. The City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City.</p> <p>Please contact the Planning Division for the deposit amount.</p>

<input type="checkbox"/>	<p>Regulatory Authorization</p> <p>An applicant shall submit evidence of the wireless provider's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.</p> <p>If the application is for a facility that will be located within the public right-of-way, the applicant shall certify the wireless provider is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.</p>
<input type="checkbox"/>	<p>Title Report and Property/Structure Owner Authorization</p> <p>For any small wireless facility proposed to be installed on any property or structure not owned or controlled by the City, an applicant must submit:</p> <p>(A) a title report issued no more than 30 days prior to the date the applicant files an application with the City; and</p> <p>(B) if the applicant is not the property or structure owner, a written authorization signed by the property owner identified in the title report or structure owner that authorizes the applicant to submit and accept a small wireless facility use permit in connection with the subject property and/or structure.</p> <p>If the owner of the property and/or structure is a public agency and an agreement has been executed between the applicant and that agency addressing the proposed small wireless facility then the applicant shall submit that agreement as part of demonstrating authorization to submit and accept a small wireless facility use permit in connection with the subject property and/or structure.</p>
<p>Project Narrative and Justification</p>	
<p>An applicant shall provide a complete written narrative analysis addressing all applicable standards, including supporting facts, allowing the City to conclude such standards have been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also address:</p>	
<input type="checkbox"/>	<p>whether and why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l);</p>
<input type="checkbox"/>	<p>whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m);</p>
<input type="checkbox"/>	<p>whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 4(C) in Ordinance No. 1654;</p>
<input type="checkbox"/>	<p>identify where the project falls in terms of location preference and structure preference; and</p>

<input type="checkbox"/>	Include detailed justification for project not located in the most preferred location/structure as provided in Section 6(B) of Ordinance No. 1654.
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Construction Drawings

An applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, security measures, lighting, trees and other landscape features. The construction drawings must:

<input type="checkbox"/>	contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
<input type="checkbox"/>	identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level;
<input type="checkbox"/>	depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and
<input type="checkbox"/>	demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

Site Survey

For any small cell wireless facility proposed to be located within the public rights-of-way and/or private property, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all:

<input type="checkbox"/>	traffic lanes;
<input type="checkbox"/>	all private properties and property lines;
<input type="checkbox"/>	above and below-grade utilities and related structures and encroachments;
<input type="checkbox"/>	fire hydrants, roadside call boxes and other public safety infrastructure;
<input type="checkbox"/>	streetlights, decorative poles, traffic signals and permanent signage;
<input type="checkbox"/>	sidewalks, driveways, parkways, curbs, gutters and storm drains;
<input type="checkbox"/>	benches, trash cans, mailboxes, kiosks and other street furniture; and
<input type="checkbox"/>	existing trees, planters and other landscaping features.

Photo Simulations	
<input type="checkbox"/>	An applicant shall submit site photographs and photo simulations showing the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
Radio Frequency (RF) Compliance Report	
<input type="checkbox"/>	An applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
Acoustic Analysis	
<input type="checkbox"/>	An applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment demonstrating compliance with the City's noise ordinance (NMC Section 19.22.070). The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
Landscaping	
<input type="checkbox"/>	<p>Landscape Features</p> <p>An applicant shall submit a landscape plan where a small wireless facility displaces any existing landscape features. The landscape plan shall describe the replacement of displaced landscaping with native and/or drought resistant plants, trees or other landscape features. The landscape plan must identify proposed landscaping by species type, size and location.</p> <p>An applicant shall also submit a landscape maintenance plan including existing vegetation, and vegetation proposed to be removed or trimmed, and proposed landscaping. Landscape maintenance must be performed in accordance with NMC Section 19.28.040.J and informs the requirements of a landscape maintenance plan.</p>
Eligible Facilities Request	
<input type="checkbox"/>	Eligible Facilities Request – If applicable, provide a statement that this application is for an eligible facilities request under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, including an explanation of how the proposed modification is an “eligible facilities request”, and written documentation sufficient to establish that it

	will not cause a “substantial change” (as that that term is defined by Section 1.61400(b)(9) of 47 CFR Part 1 Subpart U) to an existing facility.
Collocation Facility Eligibility	
<input type="checkbox"/>	Collocation Facility Eligibility – If applicable, provide a statement that this application is for an eligible collocation facility as established under Government Code Section 65950.6, including written documentation sufficient to establish that the facility that is the subject of the application meets the requirements of that section.
Shot Clock Applicability	
<input type="checkbox"/>	<p>Shot Clock Applicability – Provide a statement identifying the “presumptively reasonable period of time” that applies to the application and written documentation establishing the basis for that time period being applicable under 47 CFR Section 1.6003.</p> <p>Provide a statement indicating whether the applicant may be agreeable to extending this time period in accordance with Government Code Section 65964.1 and applicable FCC decisions, as defined within that section.</p>

Pre-Submittal Conferences

The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director or designee for all proposed small wireless facilities. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and a pre-application fee to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference. Please contact Planning Division staff for the current pre-application fee.