

Frequently Asked Questions (*Updated December 2019*)

Has the Accommodation Agreement between Verizon and the City been executed?

Yes. The agreement was approved by the City Council on November 5, 2019 and it was fully executed by the City and Verizon on November 11, 2019.

Did the Accommodation Agreement undergo National Environmental Policy Act (NEPA) review?

No. NEPA only applies to actions by federal agencies (e.g., approval of a federal license or permit) and actions by state or local agencies involving federal funds. The Accommodation Agreement is not subject to NEPA because the proposed installations are not on federal property, do not utilize federal funding, and do not involve the issuance of permits or licenses by a federal agency.

Does the August 2019 Court of Appeals decision in United Keetoowah Band of Cherokee Indians in Oklahoma V. FCC prohibit the City from entering into the Accommodation Agreement or from processing or issuing encroachment permits for small wireless facilities?

No. In March 2018, the FCC adopted an Order exempting certain small wireless facilities from review under NEPA. In August 2019, the U.S. Court of Appeals for the District of Columbia in United Keetoowah Band of Cherokee Indians in Okla. V. FCC ((2019) 933 F.3d 728) overturned the NEPA exemption in the FCC Order. However, as discussed above, neither the Accommodation Agreement nor the encroachment permits issued by the City for small wireless facilities are subject to NEPA. Therefore, neither the FCC Order nor the U.S. Court of Appeals decision are relevant to the Accommodation Agreement or the City's encroachment permit process. These issues were discussed at both City Council Meetings when the agreement was considered (October 15, 2019 and November 5, 2019).

My Verizon cell phone works fine, why do we have to allow more wireless infrastructure in Napa?

Federal law (47 U.S.C. 332(c)) does not allow the City to regulate "personal wireless service facilities" which includes facilities that provide both phone and data services. Federal law also does not allow for the City to consider whether the existing level of wireless coverage is adequate as part of the permitting process nor makes a distinction between the purpose of phone calls versus electronic data for the wireless technology infrastructure regulations. Per recent FCC regulations, a wireless carrier is not required to prove there is a gap in existing coverage to proceed with the installation of additional infrastructure.

A group here in Napa concerned with the proposed small cell infrastructure went to each site included in the pilot program and documented calls being successfully completed with Verizon wireless phone service. As stated above, the City is unable to consider this information as part of the permitting process because the existing adequacy of cell phone coverage is not allowed to be considered as part of the permitting process under federal law.

What type of wireless technology is Verizon proposing in the current applications, 4G or 5G?

The small wireless facility applications submitted by Verizon are for equipment that supports 4G technology. The City's independent engineering consultant has reviewed the proposed equipment and confirmed that it does not support 5G technologies. Under the City's design guidelines, if Verizon wanted to upgrade, modify or replace, its 4G equipment to accommodate 5G technology, Verizon would be required to submit new applications to the City for approval for the installation of 5G technology.

Why can't the City prohibit small cell towers in residential zones?

While the City's new small cell wireless facility [guidelines](#) require carriers to evaluate placement of small wireless facilities in industrial and commercial zones and demonstrate network needs cannot be met within those areas prior to proposing to install small wireless facilities in residential areas, federal and state law prohibit the City from banning small wireless facilities in all residential areas.

California law grants wireless and other telephone service providers a right to use the public rights-of-way within cities and counties to the extent necessary to provide those services and in a manner that does not "incommode" the public's use of the rights-of-way. Although the California Supreme Court recently affirmed local authority under state law to apply discretionary zoning regulations, cities and counties cannot entirely exclude these facilities from the rights-of-way.

The placement, construction and modification of small wireless facilities in cities is also subject to federal laws. Federal law precludes the City from prohibiting small wireless facilities in all residential zones and also prohibits the City from regulating small wireless facilities in a manner that would effectively prohibit the applicant from providing personal wireless services. Pursuant to recent FCC regulations, state and local governments cannot deny applications based on the applicant's failure to demonstrate a gap in its network coverage or capacity. The City cannot deny an application for a small wireless facility because of citizens' health concerns if the proposed site is in compliance with Federal Radio Frequency ("RF") emissions standards established by the FCC. In essence, Congress has adopted a national policy that encourages the deployment of wireless facilities and equipment, as well as the wide-spread availability of wireless services which can provide video, voice and data. The City can regulate matters such as design, location criteria, and aesthetics but only under limited so long as the City's regulations do not effectively prohibit providers from providing personal wireless services.

Are cell towers physically safe to be around?

Congress delegated sole authority to the FCC to establish RF emission and safety guidelines for small wireless facilities. The wireless carriers are required to ensure that their small wireless facility installations comply with the FCC's RF limits. Local governments may check for compliance with FCC RF standards, but they cannot establish their own RF standards, whether such standards are higher, lower or even the same, nor can they reject applications for small wireless facilities based on RF concerns if the facility meets the FCC's RF standards.

The FCC regulations provide a fifty (50) times safety margin between the maximum public exposure allowed, and the level where a physiological change can be measured in a person.

Wireless operators commonly operate at a fraction of the maximum permitted by the FCC because to transmit with higher power will commonly cause cell site to cell site interference.

It should also be noted that ground level exposure is much less than that if someone were close to the antenna and in its transmission path. Further information can be found on the [FCC's RF Safety website](#).

How will neighbors be notified in the future of possible small cell installations and how can they participate?

In accordance with the City's guidelines, property owners and residential tenants within 250-feet of a proposed small cell installation will be notified within 10 calendar days after an application is received. The notice will 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 of the Director for interested parties to submit comments; (4) a statement that the Public Works Director will act on the application without a public hearing but that any interested person or entity may appeal the Public Work Director's decision by an appeal to an Administrative Hearing Officer consistent with Napa Municipal Code Title 1; and (5) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures. Once neighbors receive notification, they can participate in the process by e-mailing or calling the City with their comments.

Property owners and residential tenants within 250-feet of a proposed small cell installation will also be notified within five calendar days after the Public Works Director asks on an application for installation of a small wireless facility. As mentioned above, any interested person would then have the opportunity to appeal the decision in accordance with Napa Municipal Code Chapter 1.26.

What effect do cell tower sites have on property values?

Limited reliable data is available regarding the effect of small wireless facilities on property values. The following information was prepared for the City of Spokane, Washington:

The effect of cell tower sites on property values is an emotionally charged topic. Homeowners subjectively believe that a diminution in value is a given. Objective research seems to indicate otherwise, particularly as the distance from the cell site increases, and as time passes. Cell tower sites that are camouflaged have less effect on property values than non-stealthed, freestanding towers and poles. This ambiguity regarding property values leads to uncertainty for homeowners. While one homeowner may be concerned about aesthetics and health risks, another may welcome a cell tower because of improved coverage, capacity, network speed and improved cell service. Additionally, the effect on property values is fact specific and may vary depending upon the type of facility (cell tower, antenna site, monopole, etc.), along with its location, visual ramifications and the type of residential neighborhood. In any event, it is in residents' best aesthetic interests to minimize the number of new cell towers inside the core of residential zones by encouraging collocation among providers and expedited review processes for smaller and stealthed facilities. Further, there has been anecdotal discussion that where residences do not have good cell phone

reception, this could negatively impact potential buyers' willingness to purchase homes in that area. The ability to receive and initiate phone calls, make emergency calls, and communicate with e-mails and text messages are services that people have come to expect.