

The 3 Essential Components of an Effective Wireless Ordinance

➤ Procedure and Policies

- Procedure for applications, to guide applicants, staff and public
 - What happens when application filed: where and how submitted, what staff does first (review for completeness and acceptance), any required public notice, who makes initial grant/deny decision
 - Public's right to obtain files, staff/public ability to request additional information and when comments on the application are due
 - When staff report/recommendation is due
 - When hearing is required and timeline for hearing then initial decision
 - Appeal process
- Policies that apply to applications – example issues
 - Definitions – consistent with CommAct and FCC
 - Acceptable locations by type (macro, small cell, exempt facilities) – CommAct retains wide local discretion and choice except for exempt facilities
 - Separation and setback – this is another “location” issue
 - Aesthetics – FCC rules restricting local aesthetics choices reversed by Ninth Circuit; still wide discretion, subject to “reasonableness”
 - Safety requirements – FCC expressly held local jurisdictions can enforce generally applicable health and safety codes
 - Waiver rules in case of claimed effective prohibition (burden of proof)
- Burden of Proof and mandatory findings to be made for each decision
 - Especially important when applicant asserts effective prohibition

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➤ Application Content Requirements

- Allows easy determination whether *prima facie* case has been made
- Essential for shot clock management
 - Supports deficiency finding within initial window
 - Eliminates and highlights contested issues
 - Shortens time required to process and make decision
- Essential for staff and public to be able to assess if all criteria are met
- Supports determinations on mandatory findings
- Illustrative (not comprehensive) examples - more detail is better
 - Sworn under penalty of perjury
 - Engineer stamp
 - Property identification and proof of right
 - Location description; proximity to other towers and other sites of interest (schools, historical)
 - Proof of need and why proposed location is least worst alternative
 - Electrical and structural safety proof – code compliance

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- Permit Conditions - the conditions of and obligations imposed by an approved permit
 - Illustrative (not comprehensive) general examples – better ordinances have up to or more than 60
 - Indemnity, insurance and performance bond
 - Continued adherence to what was in application and approved
 - Not effective till permittee executes Acceptance of Conditions
 - Pass post-construction inspection
 - Length of permit term and obligation to remove at own cost on expiration or abandonment
 - Deadline to complete construction and initiate operations
 - Eventualities arising during construction (discover important cultural resources or environmental issue)
 - Continued compliance and regular affidavit of compliance with FCC emissions regulations
 - Consent to regular inspections