The 3 Essential Components of an Effective Wireless Ordinance

➢ Procedure and Policies
  ▪ Procedure for applications, to guide applicants, staff and public
    o 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
    o Public’s right to obtain files, staff/public ability to request additional information and when comments on the application are due
    o When staff report/recommendation is due
    o When hearing is required and timeline for hearing then initial decision
    o Appeal process
  ▪ Policies that apply to applications – example issues
    o Definitions – consistent with CommAct and FCC
    o Acceptable locations by type (macro, small cell, exempt facilities) – CommAct retains wide local discretion and choice except for exempt facilities
    o Separation and setback – this is another “location” issue
    o Aesthetics – FCC rules restricting local aesthetics choices reversed by Ninth Circuit; still wide discretion, subject to “reasonableness”
    o Safety requirements – FCC expressly held local jurisdictions can enforce generally applicable health and safety codes
    o Waiver rules in case of claimed effective prohibition (burden of proof)
  ▪ Burden of Proof and mandatory findings to be made for each decision
    o 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