



Small Cell Deployment in Portland, Oregon

Presenters:

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Dr. Jonathan L. Kramer, Esq.

Telecom Law Firm, P.C.

Washington, California, Southwest Airlines

TelecomLawFirm.com

Sophie Geguchadze, Telecom Attorney



Experience

- Worked on the cell tower builder side
- Worked on the wireless carrier side
- Now works for municipal/private clients

Member

- Washington State Bar, Oregon Bar, and Pennsylvania Bar
- WSBA Administrative Law Section (Member At-Large)
- Washington State Association of Municipal Attorneys (Associate Member)
- Northwest Wireless Association (Member)

Education

- J.D., University of Pittsburgh School of Law
Managing Editor, Pittsburgh Tax Review
Executive Board, Moot Court Board



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(PS: it's pronounced '**Gae-goo-chad-zé**')

Lory Kendirjian, B.A., LL.M

Senior Project Manager and Senior Paralegal

- **Heads Telecom Law Firm, P.C.'s
Small Cell Application Processing Staff**

Processed > 3,800 wireless projects for new sites/small cells, modifications, renewals in Oregon, Washington, California, New Mexico, Texas

Supervises TLF staff conducting project reviews

- **Education:**

University of Strathclyde Master of Laws (LL.M) Internet Law & Policy
IT & Telecommunications Law *with distinction* (Dissertation: “*Federal and Local Government Small Wireless Facilities Policy Frameworks: Using Wireless Siting Applications to Identify and Bridge Competing Goals and Interests.*”)

Haigazian University (B.S. B.A.)

Pasadena City College (Certified Paralegal Certificate)

University of CA Los Angeles (Management)

Allied American University (Real Estate)

- **Teaching:**

Instructor, Wireless Application Processing
(internal staff and external clients)



Lory Kendirjian

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(PS: it's pronounced '**Can-Dear-Gee-Un**')

Robert C. May III, Esq.



Robert C. May III
Managing Partner
Telecom Law Firm, PC

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San Diego, CA 92108

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Practice focused on representing public agencies and other landowners in telecom infrastructure regulations and transactions

Represents the League of Oregon Cities, League of California Cities, League of Arizona Cities and Towns, and many more public agencies before the FCC and federal courts

Represents hundreds of public agencies in telecom regulation, permitting, leasing, construction and litigation matters

JD, University of San Diego School of Law
Executive Editor, *San Diego Law Review*
Executive Board, Moot Court

(PS: it's pronounced '**Managing Partner**')

Jonathan L. Kramer, Esq., J.D., LL.M, LP.D

Experience

- Licensed by FCC since early 70s (holds six licenses/certs)
- 35+ years in telecom engineering/safety reviews (RF, broadband, fiber, outside plant safety, code compliance, RF safety)
- 35 years consulting on telecom matters > 1,000 governments/firms; 27 years of wireless siting and planning >2,000 cases/matters
- Expert witness/trial advisor in 40+ wireless, wired telecom cases
- Co-author, Co-editor of FCC's "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance"

Teaches

Doctoral, Masters level Instructor; Regulatory Law and Policy at Northeastern University; Boston and Seattle Campuses

Member

Admitted to practice law in California and New Mexico
IMLA (Attorney Member)
NATOA (Twice Member of the Year)
FCBA (Member)
Society of Broadcast Engineers (Senior Member)
SCTE (UK) (Fellow Member); SCTE (US) (Senior Member)

Education

Doctor of Law and Policy, Northeastern Univ., Boston (LP.D)
Master of Law *with honors*, Strathclyde University School of Law, Glasgow (I.T. & Telecom Law) (LL.M)
Juris Doctor *cum laude*, Abraham Lincoln School of Law, Los Angeles (JD)



Dr. Jonathan L. Kramer

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Los Angeles, California 90025

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(PS: it's pronounced '**Da Founder**') 5

Map to this Small Cell Presentation

0.

Why You Should Care About Small Cells

1.

Legal Stuff (Federal Level)

2.

Legal Stuff (State Level)

3.

Small Cells in the Wild

4.

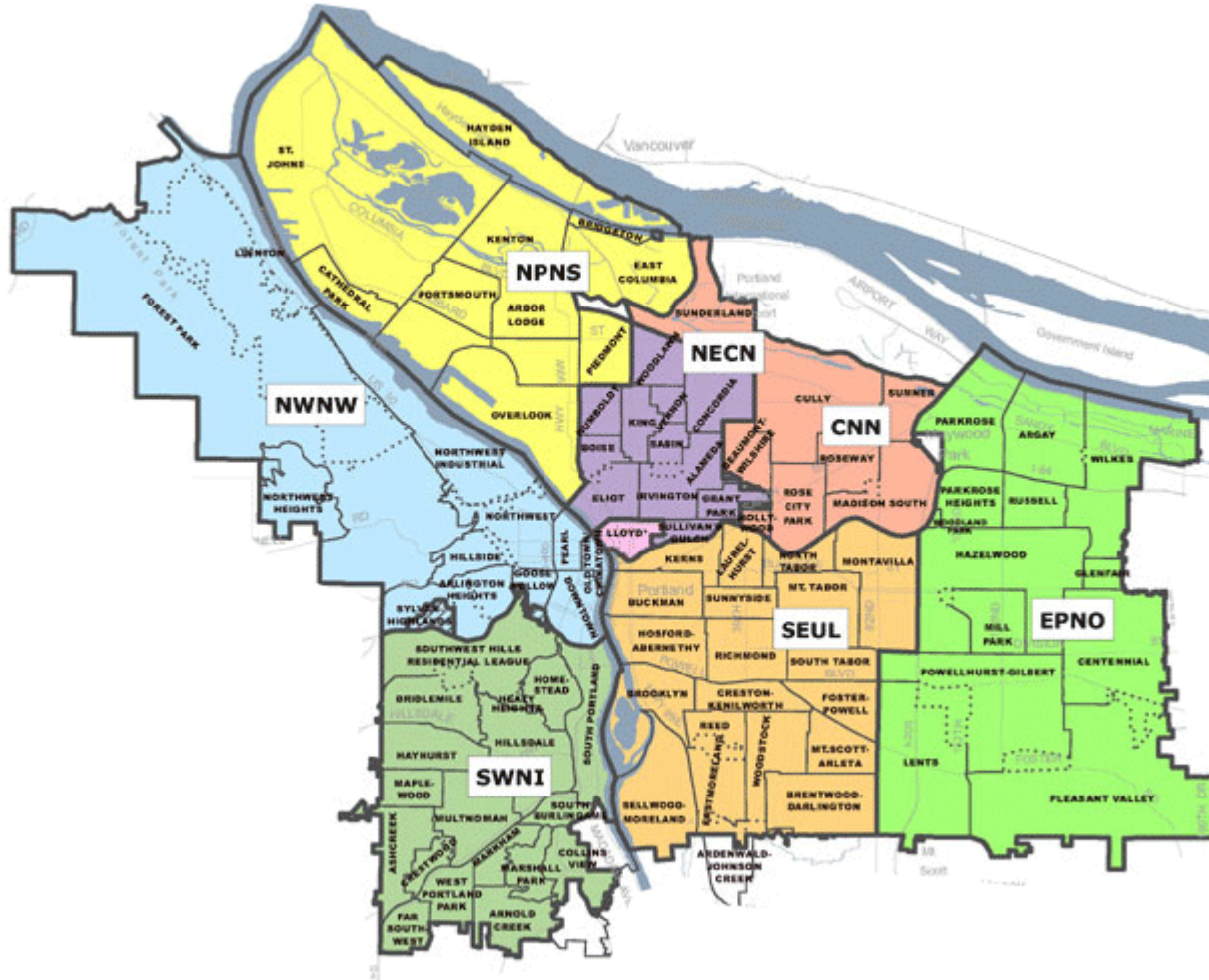
Maintaining Your Sanity
Processing Small Cell Applications



Section 0

WHY SHOULD YOU CARE ABOUT SMALL CELLS?

Small Cells: Why You *Should* Care



Industry estimates:

10 to 60 small wireless facilities
per sq. mile per carrier

3ish carriers: **VzW, AT&T,**
T-Mobile (but not DISH yet)

City of Portland: 133.42 sq.
miles (land)

The New (Conservative) Math:

Assume:

x Only **3** carriers

x Only **20** SWFers per sq.mi.

x Only **80** sq.mi.

= **~4,800ish** new

SWFers over the next 3 to 5
years, mostly in the PROW,
but also some (hundreds)
likely on private property.

*Get ready, get set,
.....get swamped*



Section 1

LEGAL STUFF (FEDERAL LEVEL)

2018 FCC Orders

Moratorium Order

- prohibits “express” and “de facto” moratoria
- must accept applications
- cannot use traditional local tool to study the issue

Small Cells Order

- creates a new regulatory classification for **small wireless facilities**
- establishes a national standard for an **effective prohibition** with new presumptions and remedies
- adopts **new, faster shot clocks** for processing applications
- limits **pole attachment fees** and local **aesthetic regulations**

2018 FCC Orders

What is a small cell?

(l) *Small wireless facilities*, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).



A 28 cubic
foot box
can be very
slimming

(for da founder)

3 cubic foot antennas

- antennas are **NOT** counted in the 28 cubic foot 'small wireless facility' volume calculation
- **No LIMIT** to the number of 3 cubic foot antennas
- typical 6' tall panel antennas likely to be 3 cubic feet in volume or less

8' tall panels? *Not so likely*

2018 FCC Orders

Fees

FCC's view of 'Reasonable Permitting Cost':

- \$500 for up to the first five bundled applications are presumed to be reasonable (1, or 2, or 3, or 4, or 5 a total of \$500)
- \$100 for each additional application in the bundle are presumed to be reasonable (6 per bundle = \$600; 9 per bundle = \$900)
- Includes all costs: Zoning; Building & Safety; Permits, etc.

FCC also says that all *reasonable* costs can be passed on (permit review, external review, permit issuance, inspections, etc.)

Portland v. United States

969 F.3d 1020 (9th 2020)

- **Challenged the 2018 FCC Orders**
- **Mixed Result**
 - upheld *Moratorium Order*, shot clock rules and cost-based fee restrictions
 - invalidated certain aesthetic restrictions
 - local aesthetic rules must be reasonable and published in advance
- **No Further Appeals Left**
 - Ninth Circuit denied petition for reconsideration
 - US Supreme Court denied petition for certiorari

6409 Declaratory Ruling

35 FCC Rcd. 5977 (Jun. 10, 2020)

- **Reinterprets FCC's Section 6409 Rules**
 - shot clock commencement
 - reduced protections for existing concealment elements on “non-stealth” facilities
 - preempts prior COAs on aesthetics if in conflict with thresholds for increased height, width, cabinets, area
 - increased maximum height limit for non-ROW towers
 - excludes equipment boxes from per-modification limit on new equipment cabinets
- **Legal Challenges Pending**
 - *League of Cal. Cities, et al. v. FCC*, No. 20-71765

6409 Order

FCC 20-153 (Nov. 3, 2020)

- **Allows Larger Site Expansions for Non-ROW Towers**
 - prior rule: any change in site area = substantial change, no mandatory approval
 - new rule: any expansion 30 feet or less = not a substantial change
 - applies only to towers outside the ROW
- **Challenges Pending**
 - petition for reconsideration filed 01/04/2021
 - no judicial challenges pending

Not the “Minority Report”, but...

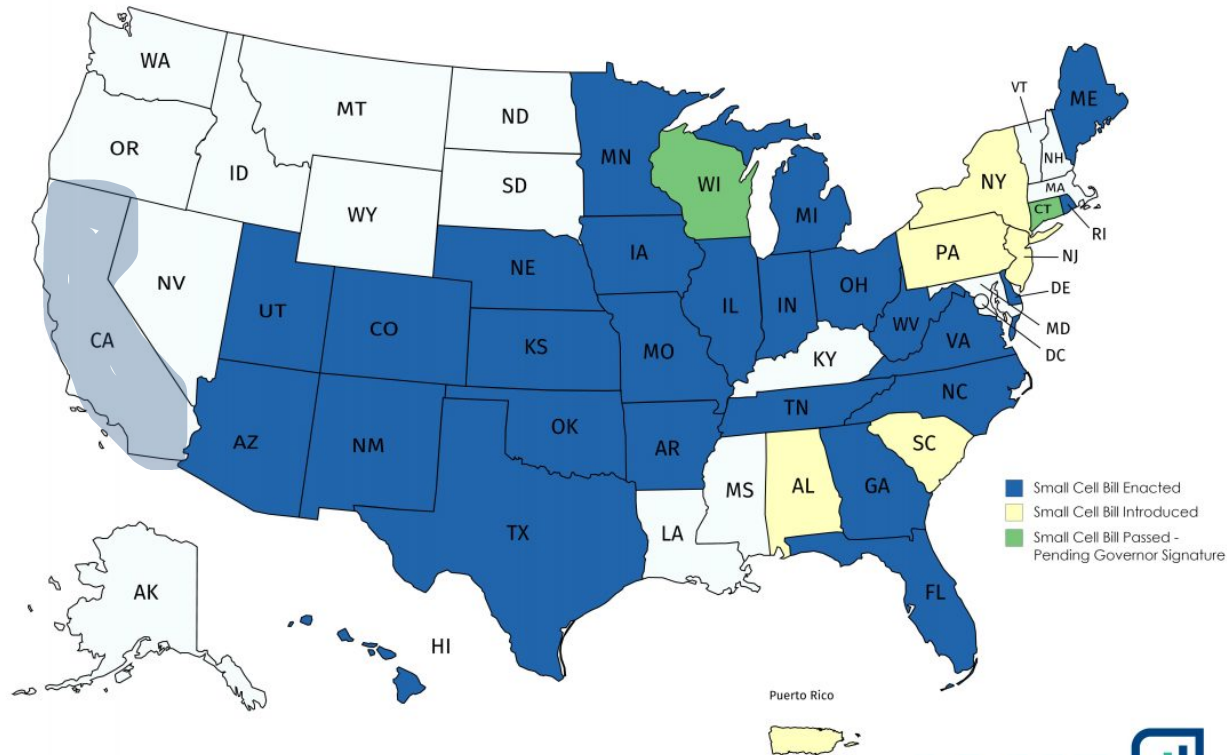
- Standard conditions of approval attach to every site approved by the jurisdiction
- Standard conditions of approval attach for approvals by operation of law
- Obligation of applicant to provide prior permits as part of the application and...
- ‘Missing’ permits treated as no permits (*no, it’s not a jurisdiction’s job to prove the negative*)



Section 2

LEGAL STUFF (STATE LEVEL)

State Small Cell Bills



- adopted in at least ~~26~~ states
- most somewhat similar to FCC rules
- almost all worse than FCC rules in one respect or another
- check with legal counsel; reconcile any differences
- ***What about Oregon?***



BRACE YOURSELF

*More State-Level Small
Cell Legislation*

WINTER IS COMING



Section 3

SMALL CELLS IN THE WILD





235th St
CITY OF TORRANCE 2500

TRUCK
ROUTE
↑

Office Space
FOR LEASE
(310)326-9025

Sierra Gateway

PROFESSIONAL
BUILDING



ROOM NG

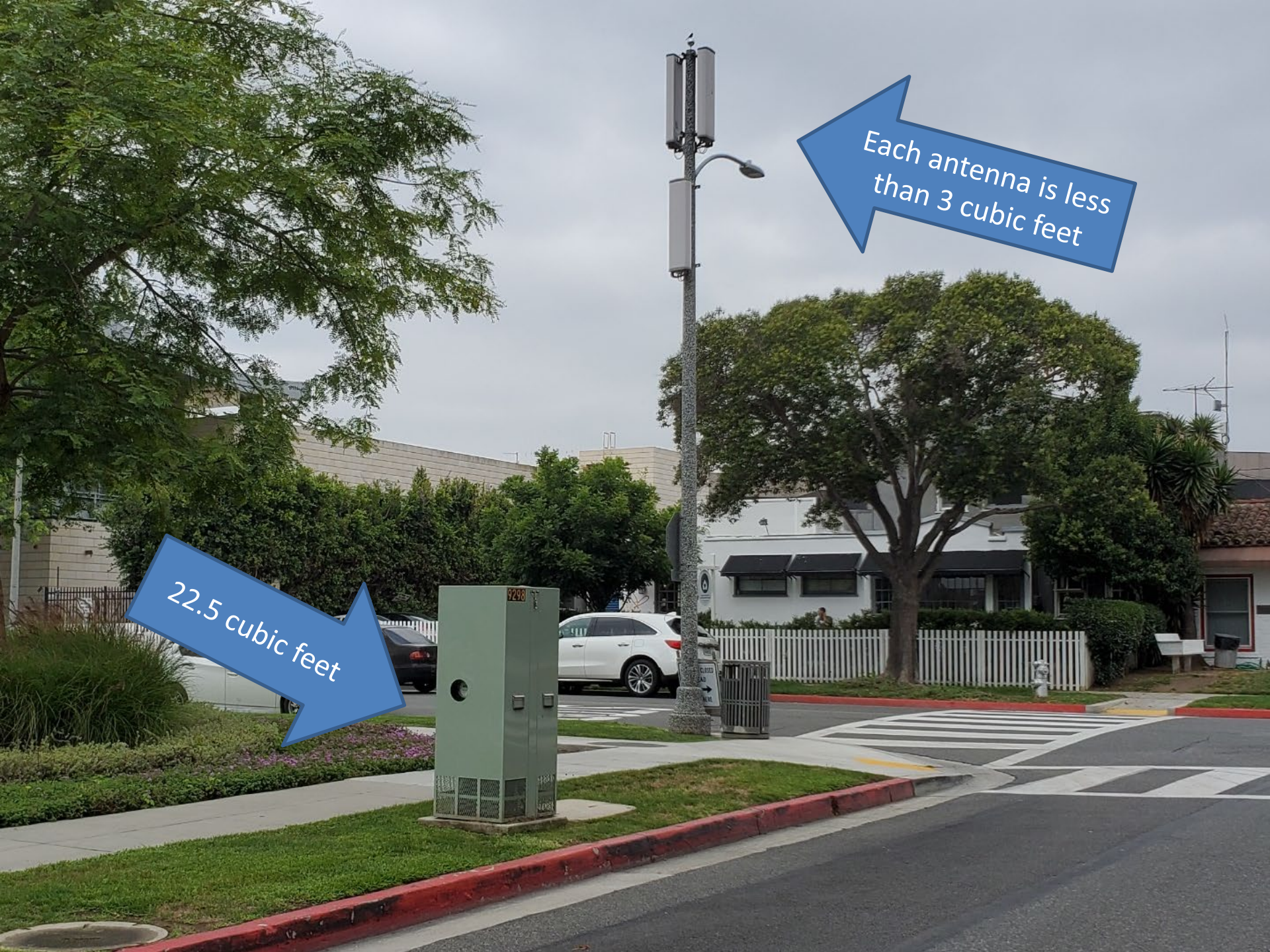


Even these might contain small cells, likely
added under Section 6409(a)



Different Infrastructure: small cell





Each antenna is less
than 3 cubic feet

22.5 cubic feet

9312

5.25 feet

2.25 feet

1.90 feet

22.5 cubic feet





SYCAMORE CYN
← CAMPGROUNDS
800 FEET

VENTURA COUNTY
CALL
BOX
1-49

NO
PARKING
ANY
TIME









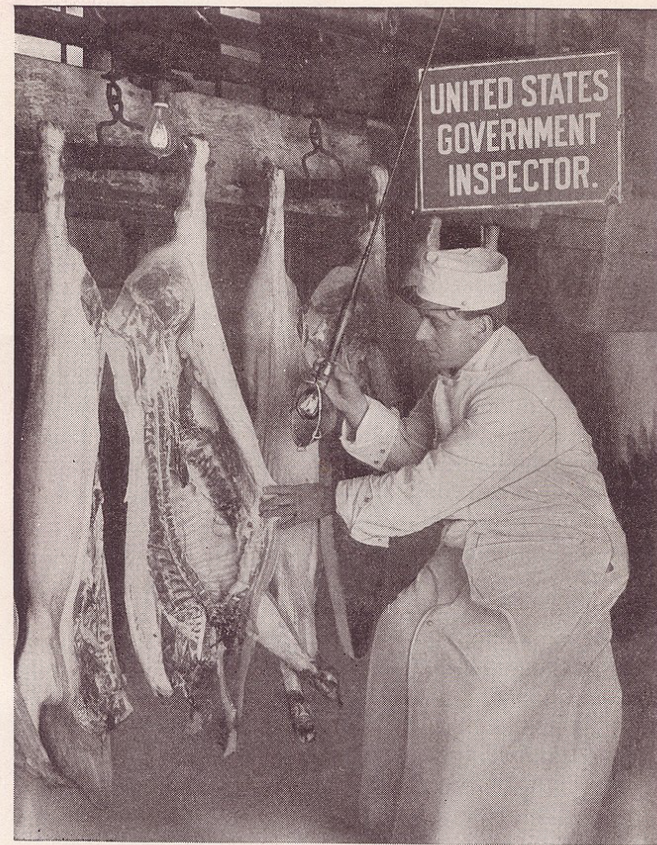
Small
cell

Even
Smaller
graffiti

Smaller
people

Section 4

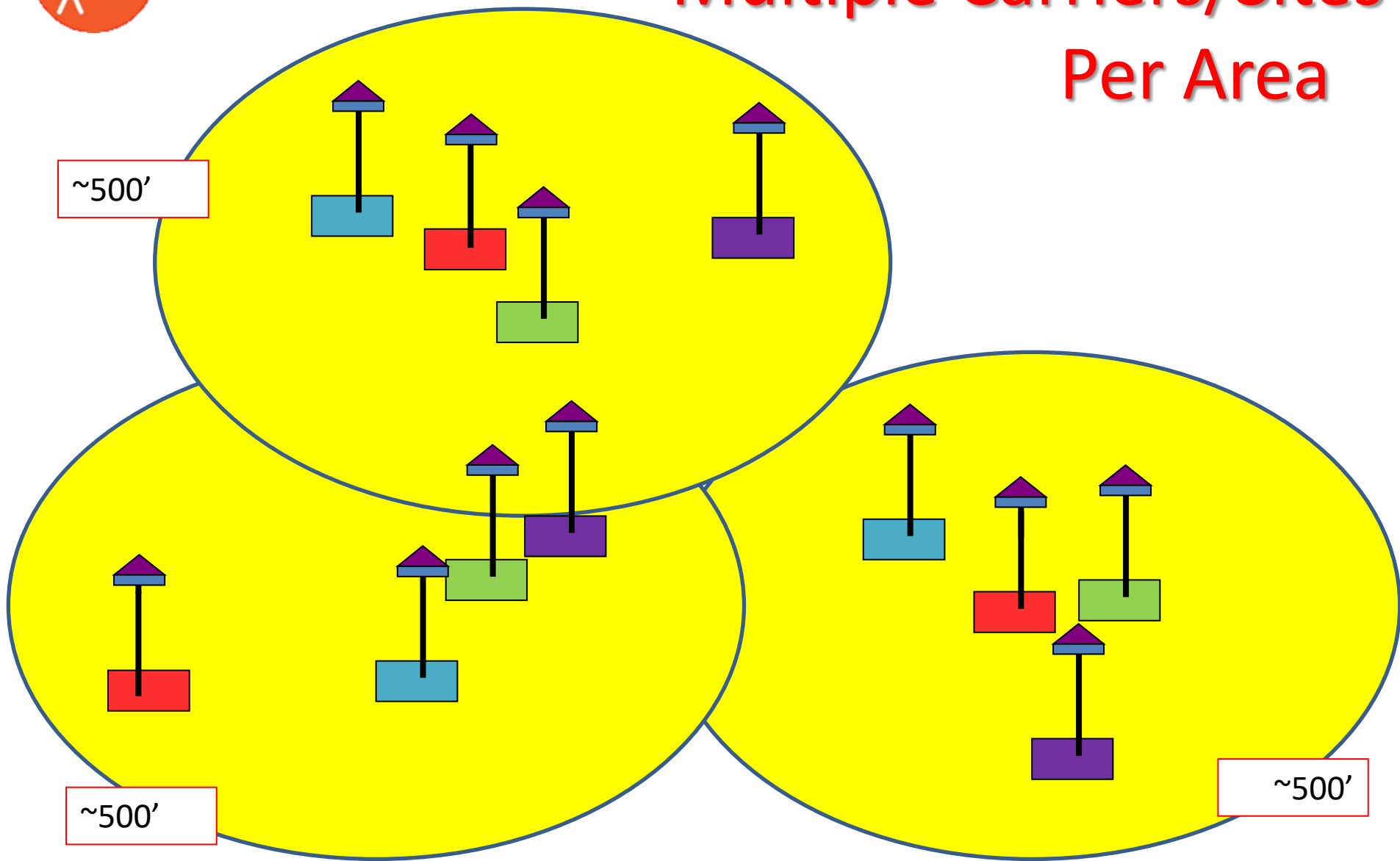
MAINTAINING YOUR SANITY PROCESSING SMALL CELL APPLICATIONS



U. S. Government Inspector Making Inspection

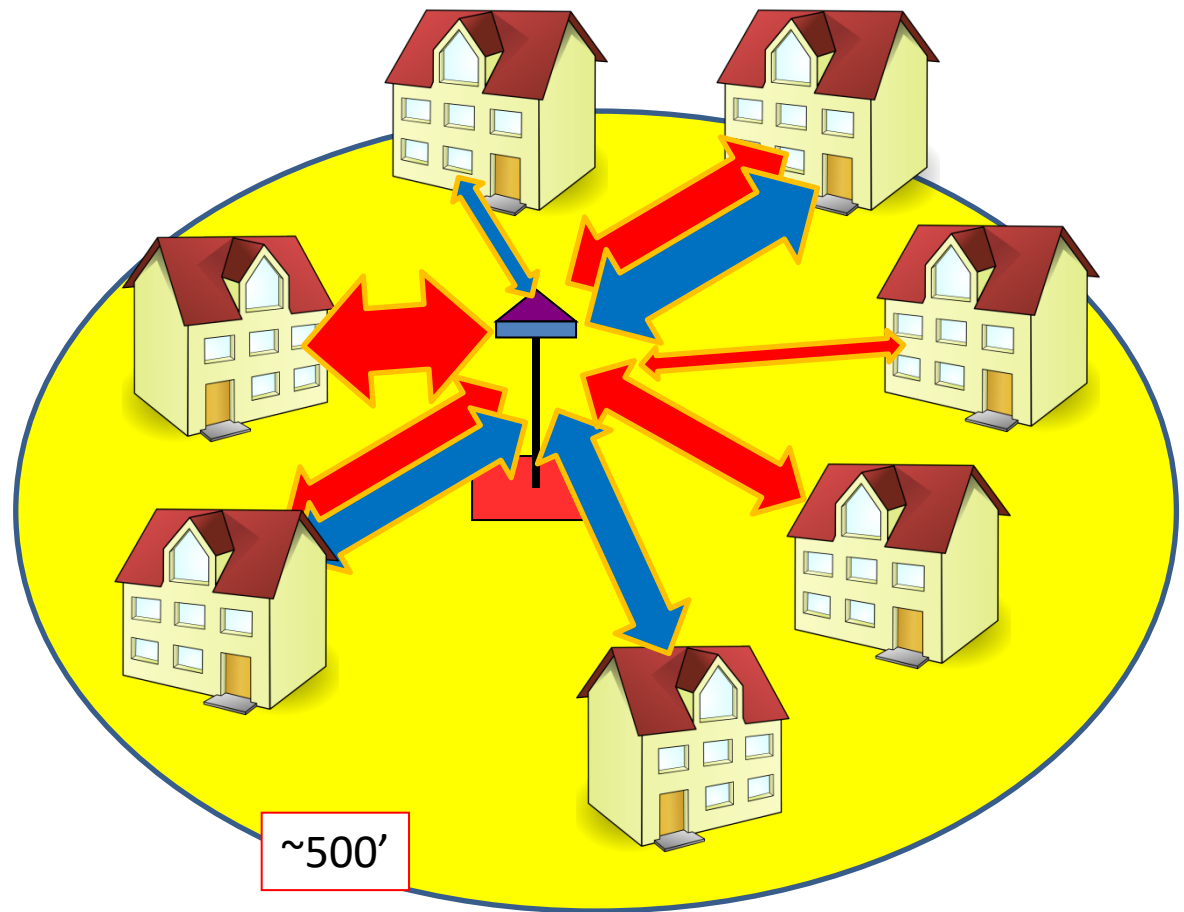


Multiple Carriers/Sites Per Area



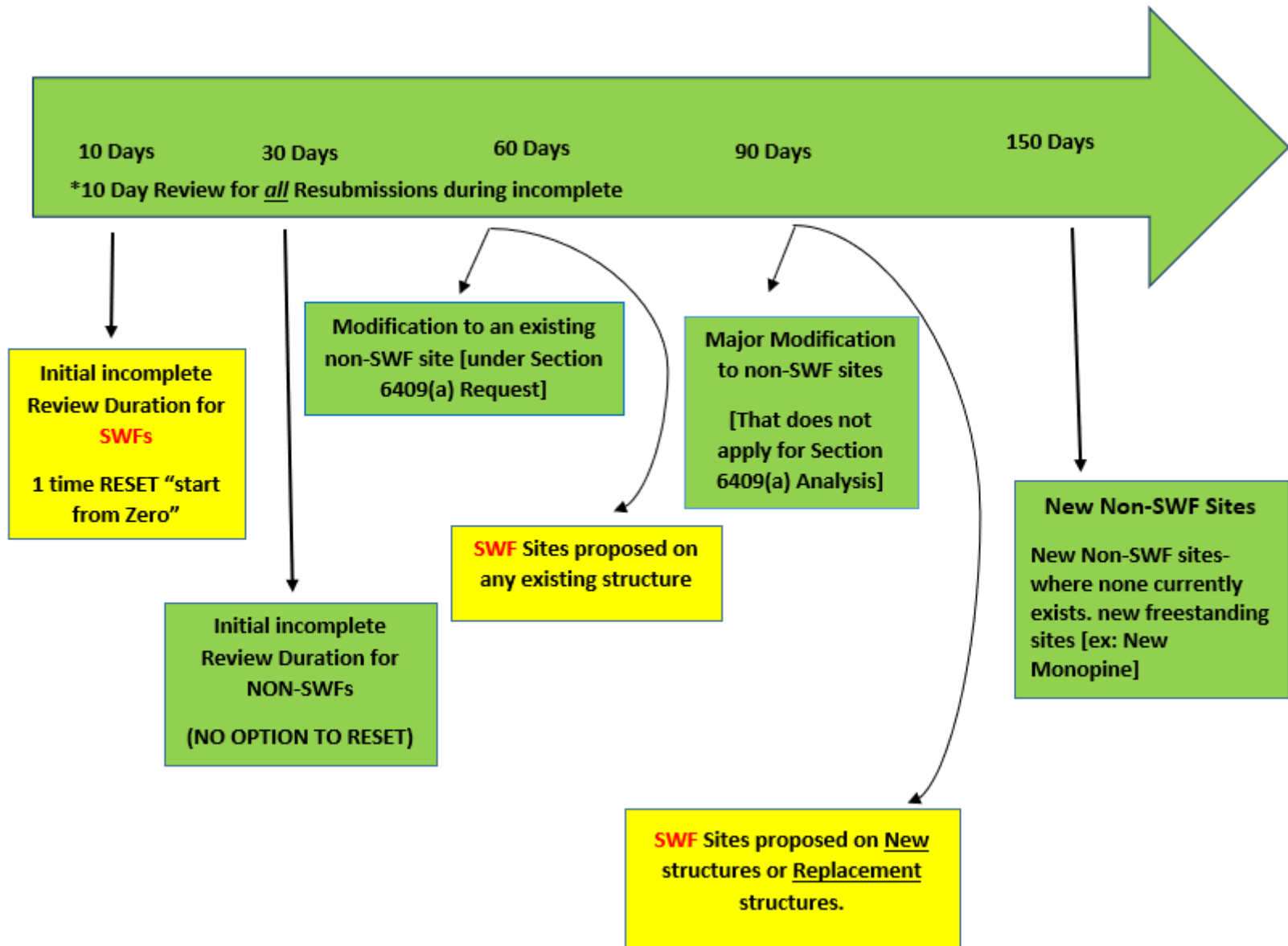


Fixed Wireless/OTT & OTARD

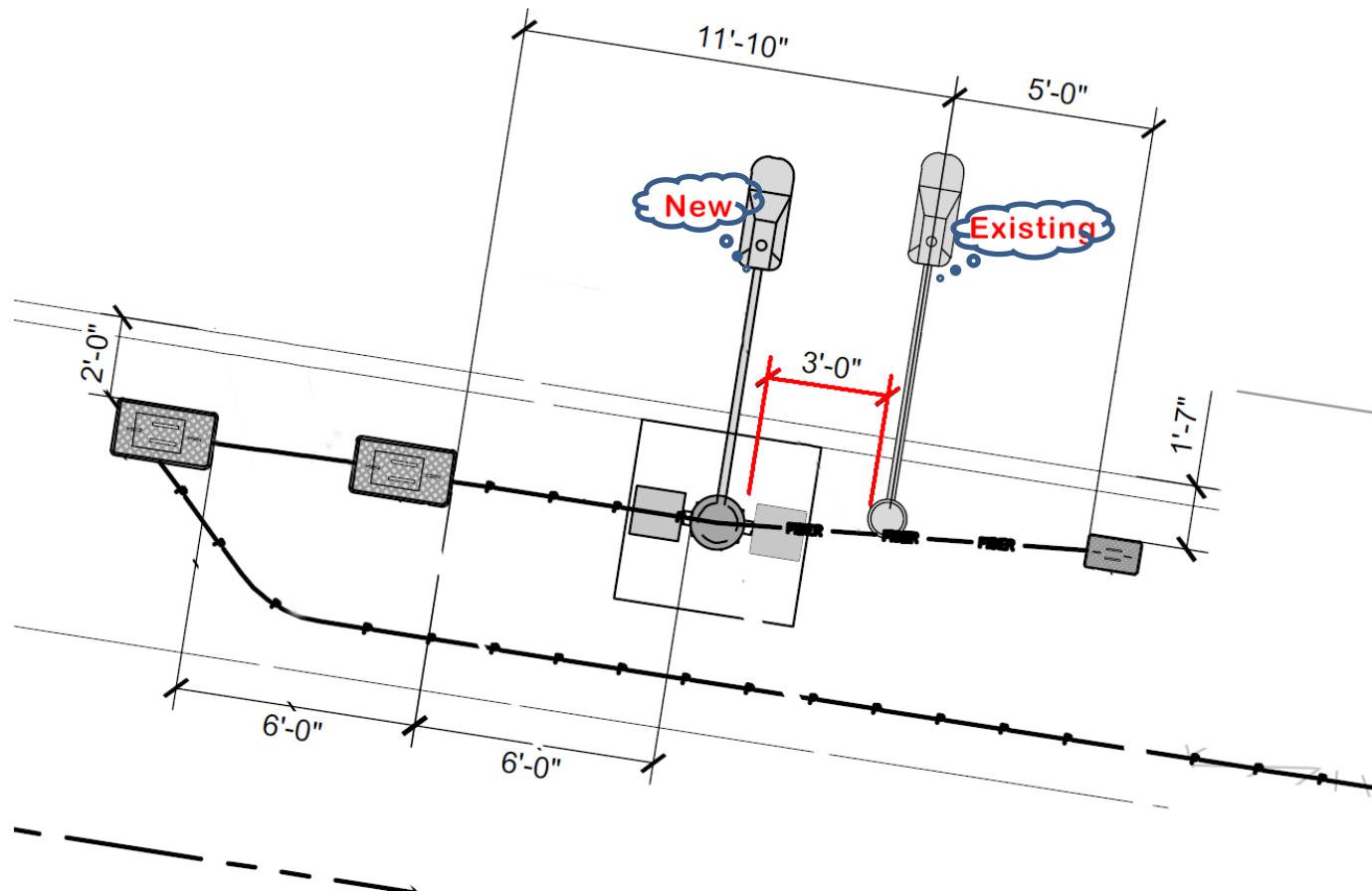


The New Shot Clock Rules

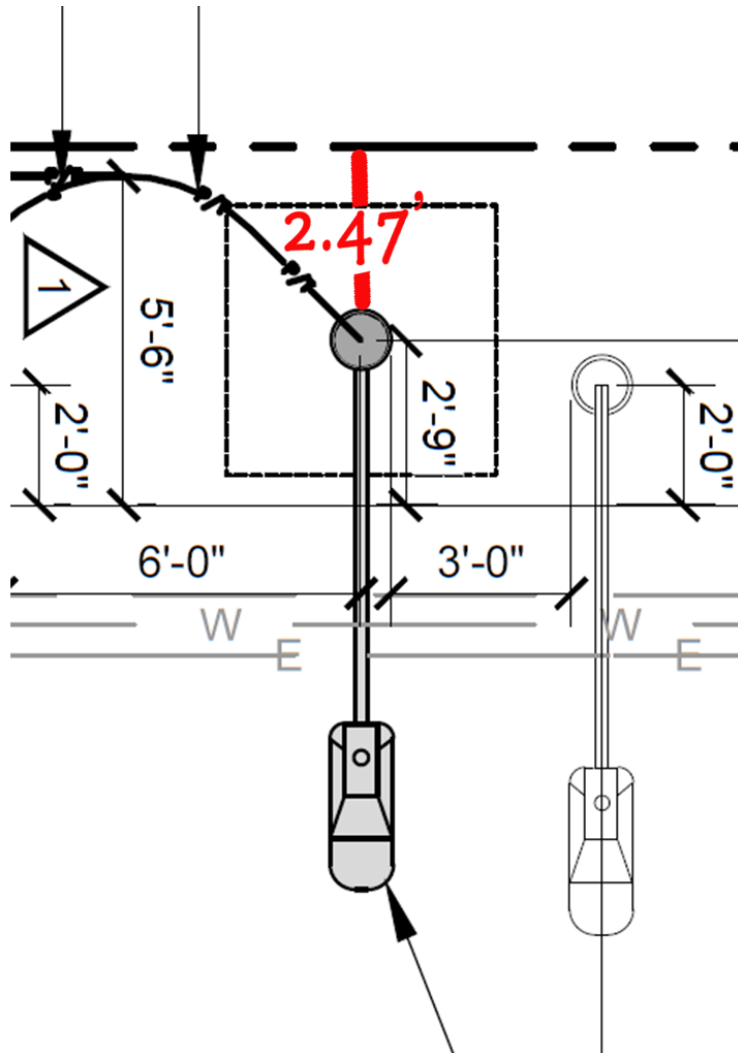
(Shortened to includes all processing, appeals, and permit issuance)



Example: 3 feet = 90 days



'It's never-gonna-happen'

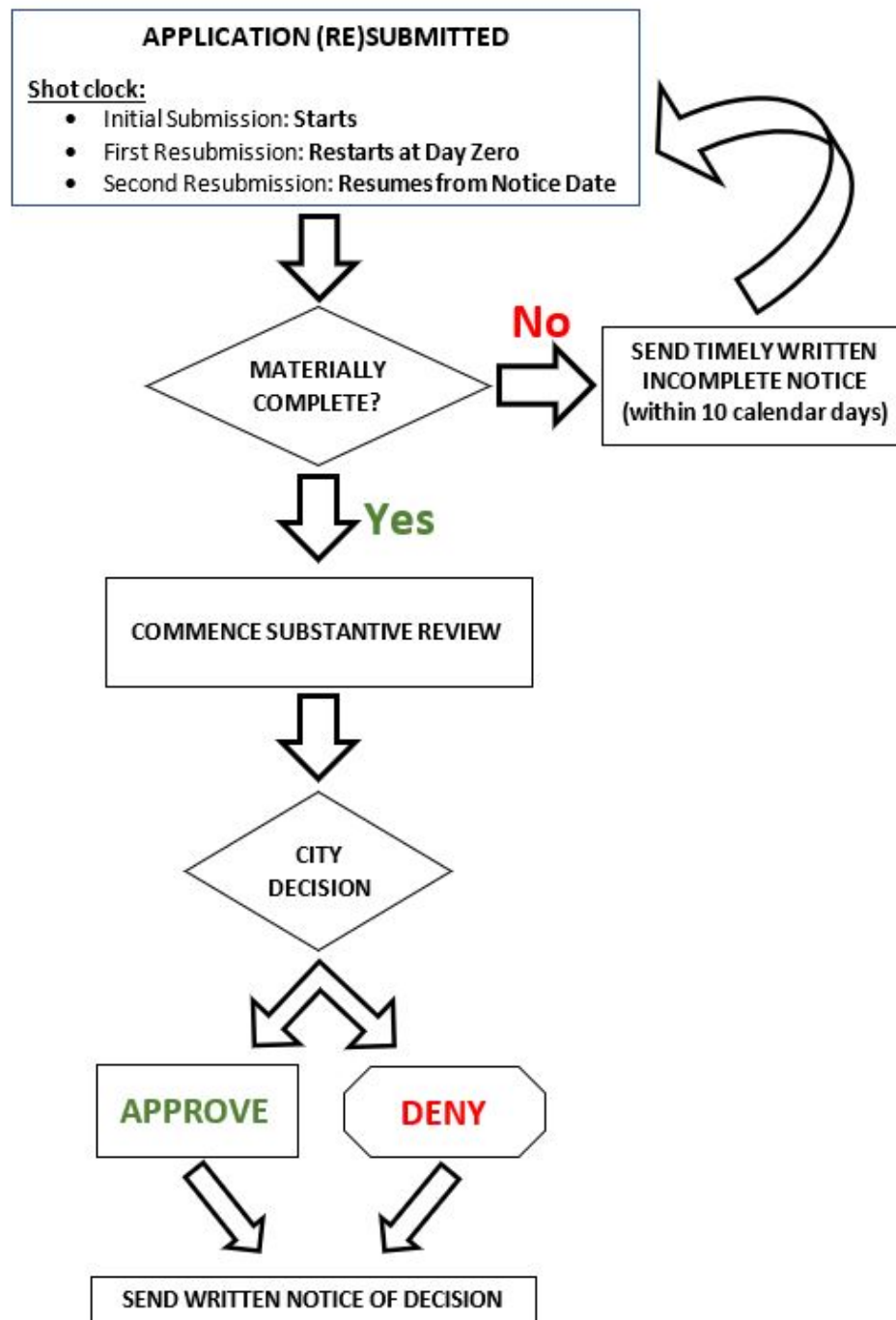


***Accept the application and fees;
process by looking for and
squashing lurking ADA, and if
found DENY the application
within the shot clock period.***



‘It’s never-gonna-happen’

***Accept the application and fees;
process by looking for and
squashing inverse
condemnations, and if found
DENY the application within the
shot clock period.***



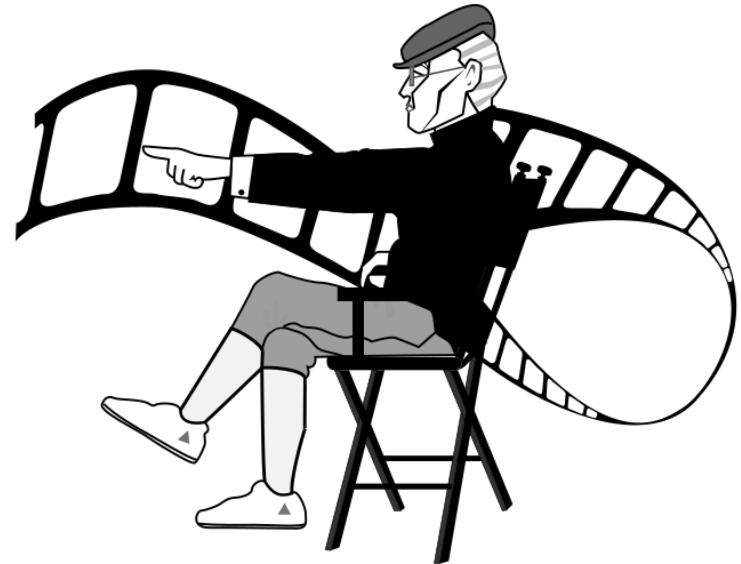
Surviving Shot Clocks

- Your APPLICATIONS are critical (require they provide last approved permits to catch unpermitted modifications)
- Incompleteness Review under the FCC's One-Bite Rule
- The shot clock starts when an application is submitted whether the application is complete or not!
- Application appointments (Mondays, Tuesdays); Submissions via email are asking for trouble; show me the money (deposit)!
- Have your processing process well-defined and follow it
- Ministerial approvals where reasonable

Surviving Shot Clocks

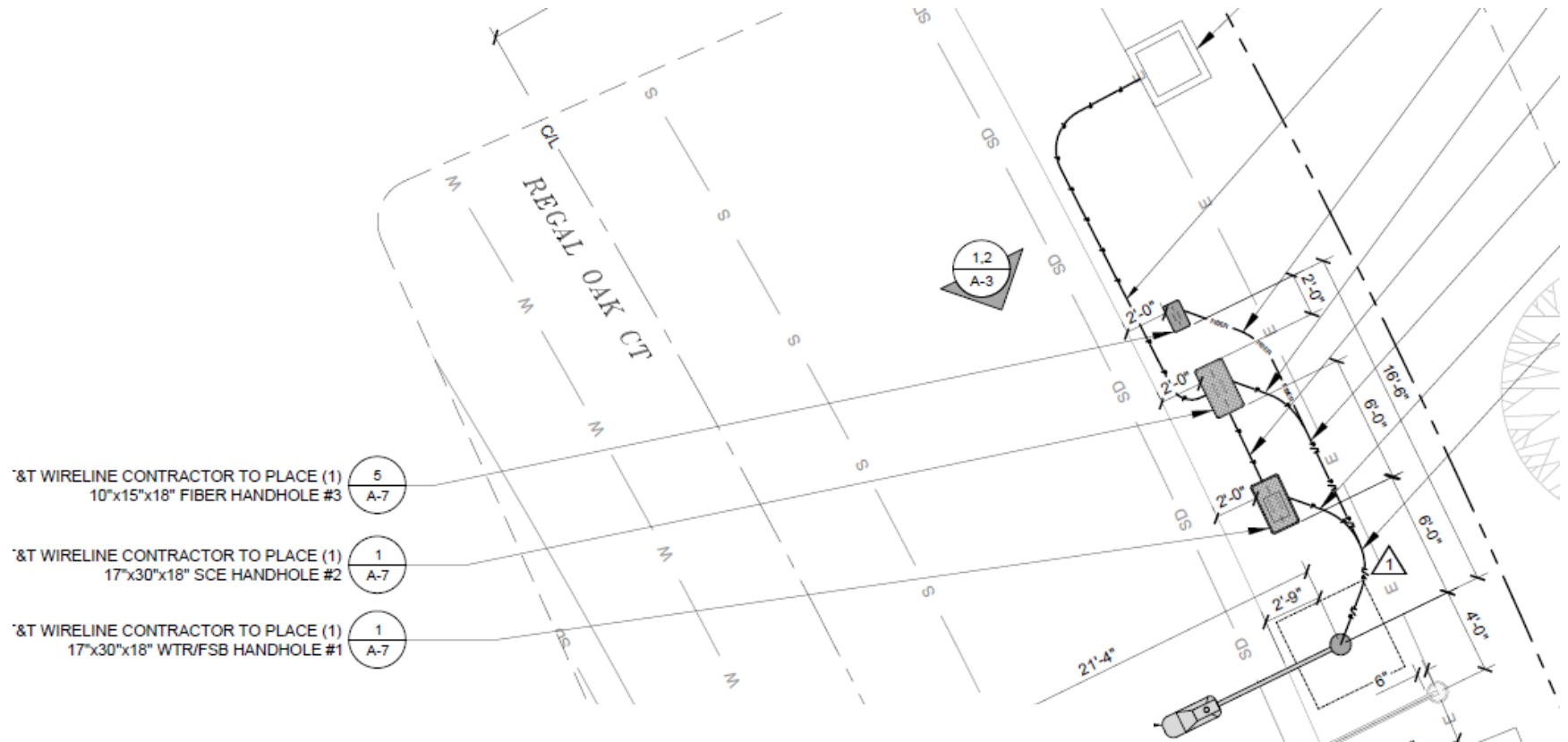
- Consider a stale application automatic withdrawal rule in your ordinance/policy to kill zombie applications (60 days?)
- NEVER issue any form of ‘complete letter’ or ‘incomplete letter’ at the counter
- Don’t mindlessly sign tolling agreements (you might accidentally revive a potential claim against the COP if you do...oops)

- Directing the application processing traffic
- Issuing application action direction to the processing time to get the shots clocked
- Picking the aesthetic shots
- Getting the actors to say the right lines *safely*
- Calling Cut...Print that!
- Final editing to the final cut
- Printing the movie permit.

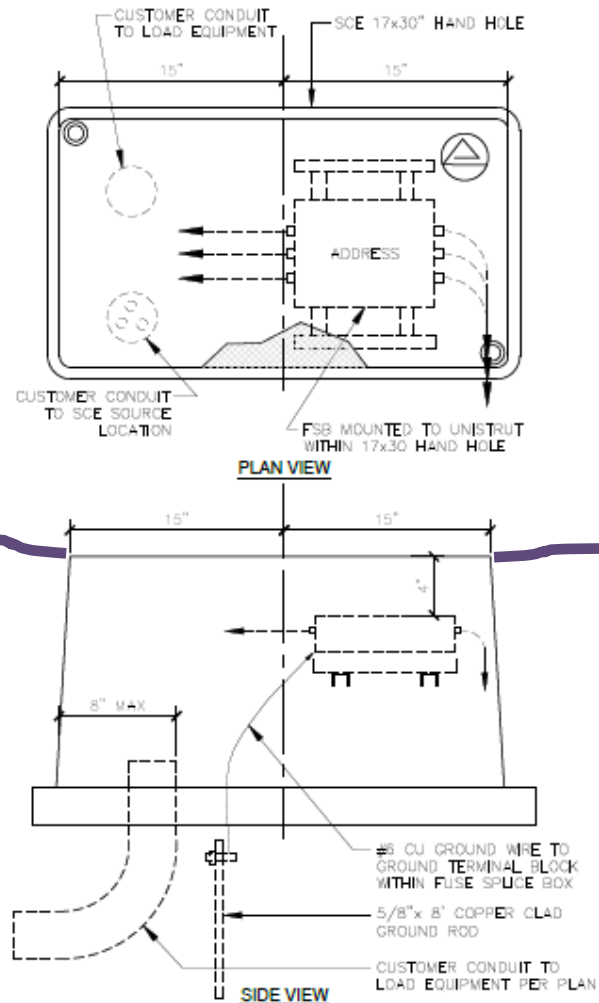


*The Planner as the
Small Cell Application
Director*

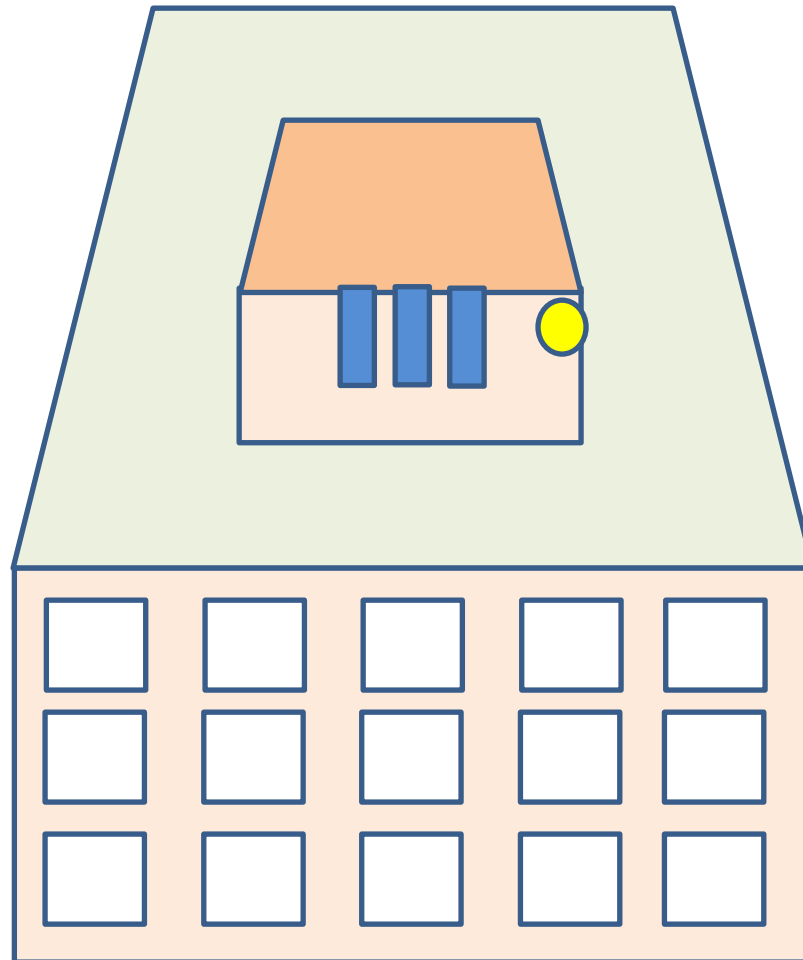
High Fiber Diet



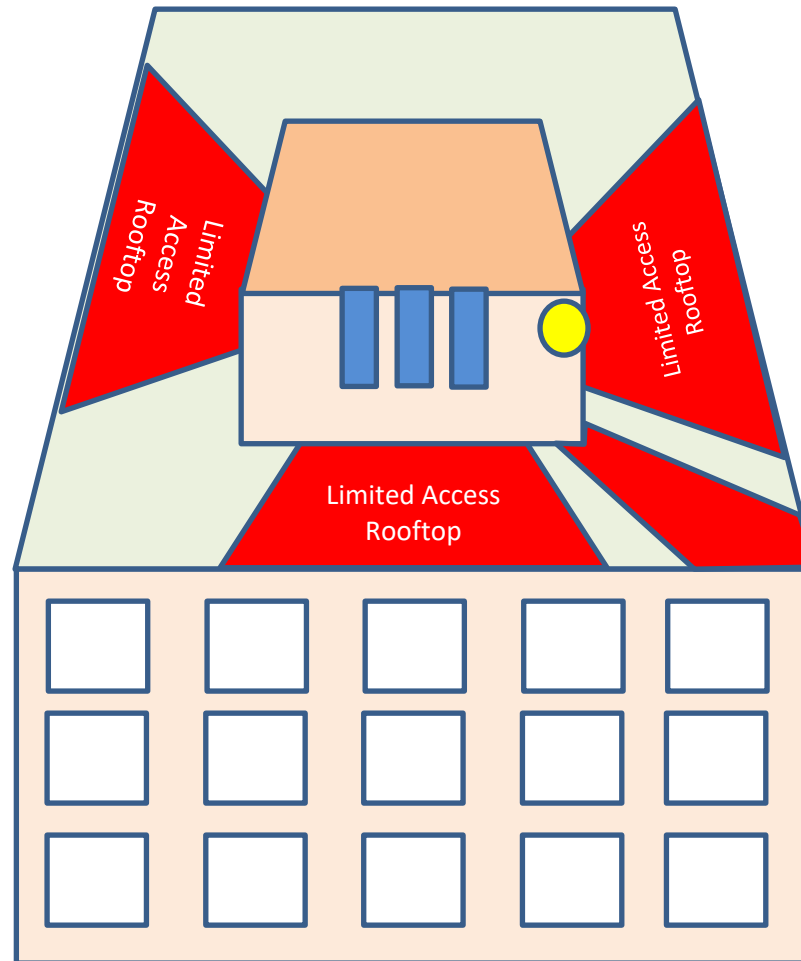
For SWFs, WTRs means fewer street furniture cabinets (good)



Small Cell RF safety on Buildings: Special Safety/Permitting Considerations



Portions of Rooftop May be Closed Off for FCC RF Safety Reasons: This is a *Permit* Issue!







Before initial sign offs,
and before any permit
amendments or
modifications, staff needs
to go look at the site and
bring along a measuring
tape.



Take photos. Lots of photos.

**Photos from different angles.
Photos close up on every sign.
Photos pulled back from every
cluster of antennas.**

**When you think you have taken
enough photos, take another
dozen or two.**

Turn on Date Stamp

**Max image size; check to make
sure the photos are clear.**

**This is a key method to
prevent/catch any unauthorized
modification**



Visualize this as a modern high-quality
cell phone camera, or better yet a real
DSLR camera in the 16+ megapixel
range.

Your planning work
will last a long
time...





WICHITA

DOWNTOWN
TIRE & WHEEL

TV * LCD * HOME & CASH

S
ELECT

WHEEL

STOPPING
PLZ

YES!

YES!

YES!

YES!





Nebraska
11800 W Ave

STOP



Section 5 of 4

CODE UPDATE DO'S AND DON'TS



Choose the Right Approach for the Subject

- **Flexible Policies vs Static Codes**
 - administrative policies allow more nimble response to changes in law, technology and local preferences
 - code provision to delegate authority may be needed
- **Differentiate b/w Regulatory Classifications**
 - similar facilities sometimes fall into different classifications, with different rules
 - best practice: separate sections/chapters for each classification (small cells, 6409 mods, macro cells)
- **Consider Interdepartmental Coordination**
 - larger role for public works depts. as deployment shifts from private property to ROW
 - should planners take lead role on ROW applications?

Aesthetic Regulations

- **DO**

- exercise your discretionary authority
- consider the difference between “stealth” and “concealed” for Section 6409 purposes; require “stealth” in aesthetically sensitive areas
- use both subjective and objective standards
- incentivize preferred locations and designs with more streamlined review processes
- delegate some authority to staff to develop more detailed design standards
- consult with stakeholders and public works staff!

- **DON'T**

- require or prohibit specific technologies
- omit standards for disfavored designs/locations

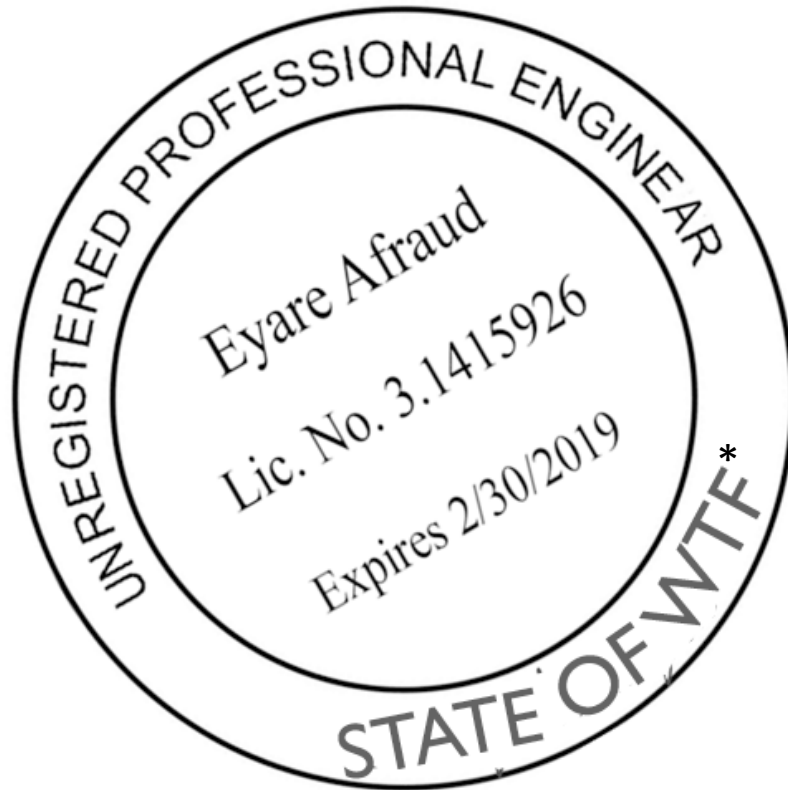
Findings and COAs

- **DO**
 - put the burden of proof on the applicant
 - include subjective findings traditionally found in zoning ordinances
 - include a finding that the proposed facility meets your design and location standards
 - include a finding that the facility demonstrates planned compliance with RF exposure rules
 - develop detailed, standardized conditions for all approved (and deemed-approved) facilities
 - authorize additional/modified conditions

Focus on Applications and Submittal Process

- **DO**
 - prepare detailed, written application forms
 - use checklists that double as incomplete notices
 - delegate control over application content and intake procedures to department staff
 - expressly list the application fee as a completeness item
 - shift admin burdens to the applicant as much as possible (e.g. require notice rosters and pre-addressed/stuffed notices)
 - require applicants to “self select” as much as possible (regulatory classification, shot clock, etc.)
- **DON'T**
 - wait for the code amendment process; application requirements need not be codified
 - leave any ambiguities about the first procedural step in the submittal process
 - reject incomplete applications at the counter; take them in and send a timely incomplete notice

A Very Disturbing New SWF Wireless-Driven Problem...



We are already seeing multiple instances of the unauthorized use of P.E. stamps and signatures...

...and the apparent selling of stamps and signatures on safety plans and forms.

Includes...so far...site plans and RF safety reports



Questions? Ask now or
call or email us.

We would love to hear from you!

Resources

Telecom Law Firm, P.C. web site:
<http://TelecomLawFirm.com/>

Jonathan Kramer's Wireless Blog:
Wireless.Blog.Law

~3,000 Cell Site Example
Photographs:
<http://www.CellTowerPhotos.com>

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