

ORDINANCE NO. 11 – 17

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**AMENDING CHAPTER 8.92, 8.36, AND 8.104 OF THE DUBLIN MUNICIPAL CODE RELATING TO
DEVELOPMENT OF WIRELESS COMMUNICATIONS FACILITIES ON PRIVATE PROPERTY**

The City Council of the City of Dublin does hereby ordain as follows:

Section 1. Chapter 8.92 (Wireless Communications Facilities) of the Dublin Municipal Code is hereby amended to read as follows:

“8.92.010 Purpose.

The purpose of this Chapter is to provide a uniform and comprehensive set of standards for the development and installation of wireless communication facilities and related facilities. These standards cover the siting, designing and permitting of wireless communication facilities.

8.92.020 Intent.

The intent of the regulations contained herein is to protect and promote public health, safety, community welfare and to:

- A.** Protect the visual character of the City from the potential adverse effects of wireless communication facilities development and wireless communication facility installation;
- B.** Ensure against the creation of visual blight within or along the City’s scenic corridors and ridgelines;
- C.** Ensure that wireless communication facilities, to the maximum extent possible, are located in areas where the adverse impacts on the community are minimal;
- D.** Ensure that wireless communication facilities, which include equipment cabinets and shelters, are configured in a way that minimizes the adverse visual impact of the facilities;
- E.** Retain local responsibility for management of the use of the public right-of-way;
- F.** Enhance the ability of the provider of wireless communication services to provide such services to the community quickly, effectively and efficiently;
- G.** Ensure that a competitive and broad range of wireless communication services and high quality wireless communication service infrastructure are provided to serve the business community;
- H.** Encourage collocation when it will decrease visual impacts and discourage collocation when it will increase negative visual impacts, to the extent allowed by state and federal law; and
- I.** Establish a process for obtaining necessary permits for wireless communication facilities while at the same time ensuring compliance with applicable zoning, building, and safety requirements under this code.

8.92.030 Definitions.

For the purposes of this Chapter, unless otherwise apparent from the context, the definitions below shall apply. Where any of the definitions in this Chapter may conflict with definitions in Chapter [8.08](#) of the Dublin Zoning Ordinance, the definitions in this Chapter shall prevail for purposes of this Chapter.

A. Antenna. The term antenna shall mean any system of wires, poles, panels, rods, reflecting disc, or similar devices used for the transmission or reception of electromagnetic waves (or radio frequency signals) when such system is either external to or attached to the exterior of a structure, ground-mounted, or is portable or movable. "Antenna" includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

B. Base Station. The term base station includes any structure other than a tower that supports or houses equipment in a fixed location that enables Federal Communications Commission (FCC)-licensed or authorized wireless communications between user equipment and a communications network. As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight of wireless equipment constitutes a "Base Station".

C. Collocation. The term collocation shall mean the mounting of a wireless communication facility on or integrated within the same tower or structure as an existing, authorized wireless communication facility.

D. Fully-Concealed Facility. The term fully-concealed facility refers to wireless communication facilities which are designed and constructed to blend in with the surrounding environment so that the antenna and related equipment are not readily visible. Examples include a cupola on a building, water tank, artificial tree, rocks and a utility pole where all antenna and related equipment are internally mounted or underground.

E. Height. The term height shall mean the distance measured from ground level to the highest point on the wireless communication facility, including an antenna or piece of equipment attached thereto. In the case of "crank-up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

F. Owner or Operator. The term owner or operator shall mean the person, entity or agency primarily responsible for installation and maintenance of the wireless communication facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

G. Public Right-of-Way. The term public right-of-way shall mean and include all public streets and easements, now and hereafter owned by the City or other public entity, but only to the extent of the City or public entity's right, title, interest or authority to grant a license to occupy and use such streets and easements for wireless communication facilities.

H. Radio Frequency (RF). The term radio frequency (RF) shall mean electromagnetic energy with wave lengths between the audio range and the light range.

I. Readily Visible. The term readily visible means that an object can be seen from street level by a person with normal vision, and distinguished as an antenna or related equipment of a wireless communication facility, due to the fact that it is not fully-concealed, stands out as a prominent feature of the landscape, protrudes above or out from the structure ridgeline, or is otherwise not sufficiently camouflaged or designed to be compatible with the appurtenant architecture or building materials.

J. Related Equipment. The term related equipment shall mean all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.

K. Structure Ridgeline. The term structure ridgeline shall mean the line along the top of an existing roof or top of a structure, including existing parapets, penthouses, or mechanical equipment screens.

L. Tower. The term tower shall mean a mast, pole, monopole, lattice tower, or other structure erected on the ground or on a structure designed and primarily used to support antennas. A ground or building mounted mast greater than 15 feet tall and 6 inches in diameter supporting one or more antenna, dishes, arrays, etc., shall be considered a wireless communications tower.

M. Wireless Communication Facilities. The term wireless communication facilities shall mean a facility that transmits and/or receives electromagnetic signals, including antennas, microwave dishes, parabolic antennas, directional antennas and other types of equipment for the transmission or reception of such signals, towers or similar structures supporting the equipment, equipment buildings, shelters, cabinets, parking area and other accessory development.

N. Section 6409(a). The term Section 6409(a) refers to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. section 1455(a), as may be amended or interpreted in judicial or administrative decisions or implementing regulations.

O. Section 6409(a) Modification. The term Section 6409(a) Modification means a collocation, modification, or replacement of transmission equipment at an existing wireless tower or base station that does not result in a substantial change in the physical dimensions of the existing wireless tower or base station pursuant to Section 6409(a).

P. Substantial Change. The term substantial change for the purposes of a Section 6409(a) Modification shall mean:

1. For wireless towers outside the public right-of-way, a substantial change occurs when the proposed collocation or modification:
 - a. Increases the overall height more than ten (10) percent or the height of one additional antenna array not to exceed twenty (20) feet (whichever is greater); or
 - b. Increases the width more than twenty feet (20) from the edge of the tower or the width of the tower at the level of the appurtenance (whichever is greater); or
 - c. Involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four (4); or
 - d. Involves excavation outside of the current boundaries of the leased or owned

property surrounding the tower, including any access or utility easements currently related to the site.

2. For wireless towers within the public right-of-way and for all base stations, a substantial change occurs when the proposed collocation or modification:

- a. Increases the overall height more than ten (10) percent or ten (10) feet (whichever is greater); or
- b. Increases the width more than six (6) feet from the edge of the tower or base station; or
- c. Involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground mounted equipment cabinets; or
- d. Involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
- e. Involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

3. For all proposed collocations and modifications, a substantial change occurs when:

- a. The proposed collocation or modification would defeat the concealment elements of the tower or base station; or
- b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is determined to be inconsistent with the thresholds for a substantial change described in this section.

The thresholds and conditions for a "substantial change" described in this section are mutually exclusive—the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual wireless tower or base station. The cumulative limit is measured from the physical dimensions of the original structure for base stations and all sites in the public rights-of-way, and from the smallest physical dimensions that existed on or after February 22, 2012, for wireless towers on private property.

8.92.040 Exemptions.

The following wireless communication facilities are exempt from the standards of this Chapter, but shall fully comply with other applicable requirements of the municipal code including, but not limited to, adopted building, electrical, plumbing, mechanical, and fire codes:

A. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, multi-channel multipoint distribution providers (MMDS), or television broadcast stations (TVBS), provided that all of the following conditions are met:

- 1. The antenna measures 39 inches (one meter) or less in diameter within residential

districts; or 78 inches (two meters) or less in diameter within commercial and industrial zoning districts;

2. If the antenna is mounted on a mast, the mast must measure less than twelve (12) feet in height;

3. The antenna does not pose a threat to public safety, including, but not limited to, minimum separation from power lines, compliance with electrical and fire code requirements, and secure installation, as determined by the Building Official;

4. The antenna is not located on a site or building with historical significance, as demonstrated by inclusion on any list of historical sites officially adopted by any local, state, or federal governmental body;

5. To the extent feasible, the antenna is installed in a location where it is not readily visible from the public right-of-way.

B. Amateur radio antennas that do not exceed the maximum building height for the zoning district in which it is located by more than 25 feet. If an antenna is installed on the roof of the building, the height of the antenna shall be inclusive of the building height.

C. Public communication facilities, including personal wireless services, used and maintained by the City, or any fire district, school district, hospital, ambulance service, governmental agency, or similar public use.

D. Minor repair and regular maintenance of an existing wireless telecommunication facility that does not increase the number, height, size, or appearance of the antennas or ancillary related equipment as previously approved by the City.

E. All wireless communication facilities in the public right-of-way. Wireless communication facilities in the public right-of-way shall be subject to a Personal Wireless Facilities Services Permit as set forth in Chapter 7.04 of the Dublin Municipal Code, which sets forth the particular terms and provisions under which the approval to occupy and use the public rights-of-way of the City will be granted if occupancy of the public rights-of-way is desired or required.

F. Any "co-location facility" that meets the requirements of California Government Code Section 65850.6.

8.92.050 Permitting Procedure.

A Site Development Review pursuant to Chapter 8.104 shall be required for all new or modified wireless communication facilities, unless otherwise noted in this Chapter.

8.92.060 Application Requirements.

A. **New Wireless Communication Facilities.** The following application materials are required for new wireless communication facilities:

1. **Plans.** Complete and accurate plans, fully-dimensioned and drawn to scale, which include the following items.

- a. A depiction of all existing and proposed utility runs and points of contact.
 - b. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - c. Plan view and all elevations of a scaled depiction of the maximum permitted increase to towers, base stations and other support structures as authorized by Section 6409(a) of the 2012 Middle Class Tax Relief Act. The proposed project shall be used as the baseline for new facilities and the existing facility used as the baseline for modifications.
2. **Authorization.** A statement from property owner authorizing application.
 3. **Description of Services.** A description of the services that the applicant proposes to offer or provide in conjunction with the proposed sites.
 4. **Definition of Service Area.** Definition of the service area needed for coverage or capacity of a wireless communication facility and service area maps and information showing that the proposed facility would provide the needed coverage or capacity.
 5. **Alternative Site Analysis.** Alternative site analysis and map showing all alternate sites, including all collocation opportunities within one-half mile, that were analyzed in the wireless communication service provider's site selection process and any additional sites as required by the Community Development Director from which the needed coverage could also be provided, indicating the zoning for all such sites. The analysis shall address the potential for collocation at an existing or new site.

An alternative site analysis is not required for facilities which are fully-concealed from public view.
 6. **Visual Analysis.** Photo simulations of the proposed project including a map depicting where the photos were taken. The visual impact analysis may require photo overlays, scaled models, renderings, or mockups as determined appropriate by the Community Development Director.
 7. **Noise Analysis.** Noise impact analysis information for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators. A manufacturer's specification sheet may be provided in lieu of a noise impact analysis, if determined appropriate by the Community Development Director.
 8. **RF Emissions.** Written documentation demonstrating that emissions from the proposed wireless communications facility are within the limits set by the FCC. The document shall include both the actual levels as they exist currently and the cumulative levels for the proposed facility and all other facilities in the vicinity.
 9. **Landscape Plan.** Where applicable, the applicant shall submit a plan depicting existing surrounding landscaping, proposed landscaping, a landscape protection plan for construction and a maintenance plan (including an irrigation plan).
 10. **Other Information.** The applicant shall submit any other relevant information as required by the Community Development Director.

B. Modifications to Existing Wireless Communication Facilities. The following application materials are required for modifications to all existing wireless communication facilities except Section 6409(a) Modifications:

1. Plans. Complete and accurate plans, full-dimensioned and drawn to scale, which include the following items.

a. A depiction of all existing and proposed utility runs and points of contact.

b. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plain view.

2. Prior Permits. True and correct copies of all previously obtained land use approvals, including all required conditions of approval.

3. Noise Analysis. Noise impact analysis for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators. A manufacturer's specification sheet may be provided in lieu of a noise impact analysis, if determined appropriate by the Community Development Director.

4. RF Emissions. Written documentation demonstrating that emissions from the proposed wireless communications facility are within the limits set by the FCC. The document shall include both the actual levels as they exist currently and the cumulative levels for the proposed facility and all other facilities in the vicinity.

5. Other Information. The applicant shall submit any other relevant information as required by the Community Development Director.

8.92.070 Section 6409(a) Modification.

Except as expressly modified by this section, an application for a Section 6409(a) Modification shall be subject to the provisions of this Chapter.

A. Application Materials. Notwithstanding Section 8.92.060 (Application Requirements), the following application materials are required for Section 6409(a) Modifications:

1. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated. The plans must include plan views and all four elevations that depict the physical dimensions of the existing facility as it existed on February 22, 2012 or as approved if constructed after February 22, 2012.

2. A description of all construction that will be performed in connection with the proposed modification, including, but not limited to, the location of any excavations or deployments.

3. A written statement that explains in plain factual detail whether and how Section 6409(a) and applicable implementing regulations require approval of the proposed Section 6409(a) Modification. A complete written narrative analysis shall state the applicable standard and all facts that would allow the city to conclude the standard has been met. Bare conclusions without factual support shall not constitute a complete written analysis. As part of the written statement the applicant shall include: (i) whether and how the support structure qualifies as an existing tower or existing base station; and (ii) whether and how the proposed Section 6409(a)

Modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment, or permit compliance.

4. True, correct and complete copies of all permits and other regulatory approvals, including without limitation any conditions of approval, issued in connection with the tower or base station to be collocated on or modified.

B. Review and Required Findings. Notwithstanding the provisions of 8.92.050 (Permitting Procedures) and 8.92.080 (Development Standards and Regulations), the Community Development Director shall approve or deny a request for a Section 6409(a) Modification in accordance with this section and applicable federal law or regulations. The Community Development Director shall approve an application for a Section 6409(a) Modification if he or she makes the following findings:

1. The proposed modification does not cause a substantial change in the existing tower or base station and otherwise fully qualifies as a Section 6409(a) Modification under applicable law;
2. The existing tower or base station was permitted with all required regulatory approvals required at the time of construction; and
3. The proposed modification does not violate any legally enforceable standard or permit condition reasonably related to public health and safety, including, but not limited to, building, structural, electrical, and safety codes.

A proposed modification to a wireless communication facility that does not qualify as a Section 6409(a) Modification shall be denied and will instead be subject to the requirements set forth in this Chapter for the specific type of wireless communication facility proposed.

C. Other. Nothing in this section prevents the city from imposing other lawful conditions on the approval of a Section 6409(a) Modification including, but not limited to, conditions consistent with obligations imposed on the initial installation. Nothing in this section shall be construed to waive or limit the city's proprietary right to control the use of its real or personal property for telecommunications purposes.

8.92.080 Development Standards and Regulations.

A. Residential Districts. Wireless communication facilities are prohibited on private property in all residential zoning districts and comparable Planned Development zoning districts except as indicated in Section 8.92.040.

B. Location Criteria. All wireless communication facilities shall be located so as to minimize their visibility. The following measures shall be implemented:

1. No wireless communication facilities shall be installed on an exposed ridgeline, or at a location readily visible from I-580, I-680, or scenic corridor identified in the Eastern Dublin Scenic Corridor Policy, or on property designated Parks/Recreation, Open Space, or Stream Corridor on the Dublin General Plan, unless it blends with the surrounding existing natural and artificial environment in such a manner as to not be readily visible, and a finding is made that no other location is technically feasible and complies with those policy documents;
2. No facility may be located within the front setback, along major street frontages where it will

be readily visible or between the face of a building and a public street, bikeway or park, except for approved facade-mounted equipment or facilities located on existing structures;

3. No towers shall be installed closer than one half mile from any existing tower unless technologically required (technical evidence must be submitted to the Community Development Director showing a clear need for this facility, and the infeasibility of collocating it on an existing site), or visually preferable (i.e. fully-concealed facility that blends with the surrounding existing natural and artificial environment);

4. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 8:00 p.m. and 7:00 a.m. on weekday nights. At no time shall equipment noise from any source exceed an exterior noise level of 60 dB at the property line. If the facility is located within one hundred (100) feet of a residential use, noise attenuation measures shall be included to reduce noise levels to a level of 50 dBA measured at the property line.

5. All towers shall be set back at least twenty percent (20%) of the tower height from all property lines, and at least one hundred (100) feet from any public trail, park, or outdoor recreation area, unless it is a fully-concealed facility that blends with the surrounding existing natural and artificial environment.

C. Design Review Criteria. In addition to all other requirements set forth in this Chapter, all wireless communication facilities shall meet the following design requirements:

1. Minimizing Visual Impact. All wireless communication facilities shall incorporate appropriate techniques to camouflage, disguise and/or blend them into the surrounding environment. Wireless communication facilities shall be in scale and designed to blend with the existing natural or built surroundings and existing supporting structures. The City shall have the authority to require special design features for the wireless communication facilities in areas of particular sensitivity (e.g. proximity to historic or aesthetically significant structures, views and/or community features).

Based on potential aesthetic impact, the order of preference for facility type is: (1) Collocation sites, when such siting minimizes adverse effects related to land use compatibility, visual resources, public safety, and other environmental factors, (2) building-mounted (façade or roof) facilities, (3) ground-mounted facilities and (4) a new tower.

2. Paint and Finish Materials. Wireless communication facilities including the antennas and related equipment shall be constructed out of non-reflective materials, painted and/or textured to match the existing support structure and painted to blend with their surroundings.

3. Related Equipment. All equipment shelters or cabinets must be concealed from public view or made compatible with the architecture of surrounding structures or placed underground. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, or other camouflage treatment to minimize visual impacts.

4. Lightning Arrestors and Beacon Lights. Lightning arrestors and beacon lights shall not be included in the design of facilities unless required by the FAA. Lightning arrestors and beacons shall be included when calculating the height of facilities such as towers.

5. Height. The maximum height of a wireless communication facility shall be equal to the

height limit for the district in which it is located. An exception to the height limit may be approved based on a visual analysis demonstrating that views of the facility are minimized or are substantially screened, and on an engineering analysis justifying the height of the proposed facility and demonstrating that a lower height is not feasible.

6. Lighting. Wireless communication facilities shall not be artificially lighted, unless required by the FAA or other applicable authority and designed to ensure the least disturbance to the surrounding views.

7. Satellite Dish/Parabolic Antennas - Ground-Mounted. Satellite dish or parabolic antennas that are ground-mounted shall be situated as close to the ground as possible to reduce visual impact without compromising their function. No such antenna shall be located in any front yard, nor in a corner side yard unless the antenna is screened from pedestrian-level view. No such antenna exceeding 39 inches in diameter shall be located within a required setback unless approved through a Site Development Review application upon a showing that no reasonable alternative location is available.

8. Roof Setbacks. Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area. Roof mounted antennas shall be designed to minimize their visibility and blend with the surroundings. Placing roof mounted antennas in direct line with significant view corridors shall be avoided.

8.92.090 Removal of Abandoned Facilities.

Any wireless communication facilities that are not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such facilities or the owner of the property upon which the facilities are located shall remove the same within ninety (90) days of receipt of notice from the Community Development Director notifying the owners of the removal requirement. If such facilities are not removed within the ninety (90) days, the Community Development Director may cause the antenna or tower to be removed at the expense of the owners of the facilities and the property. If there are two (2) or more users of a single tower, the tower shall not be deemed abandoned and shall not be subject to these provisions until all users have abandoned the facility."

Section 2. Subsection 8.36.110.C.3.c (Utility and Communication Facilities) of the Dublin Municipal Code is hereby amended to read as follows:

"c. Utility and communications facilities. Except as otherwise provided in Chapter 8.92, Wireless Communication Facilities Regulations, individual radio and television receiving antennas, wireless communication facilities, satellite dishes, transmission and distribution poles and towers for public utilities. See Chapter 8.92 Wireless Communication Facilities regarding development regulations and land use approvals for those facilities."

Section 3. Subsection 8.104.020.I (Site Development Review) of the Dublin Municipal Code is hereby added to read as follows:

"I. Minor modifications to Wireless Communications Facilities. Minor modifications to existing wireless communication facilities that involve no physical change visible from the public right-of-way."

Section 4. Subsections 8.104.030.A.4 and 8.104.030.A.5 (Site Development Review) of the Dublin Municipal Code are hereby amended to read as follows:

“4. Modifications to Wireless Communications Facilities. Modifications to existing wireless communication facilities that involve changes to the appearance where the change is in substantial conformance with the approved Site Development Review and Section 6409(a) Modifications as defined in Chapter 8.92. These facilities are also subject to the provisions of Chapter 8.92, Wireless Communication Facilities.”

5. Other Improvements. All other improvements determined by the Community Development Director to be minor in nature and requiring review.”

Section 5. Section 8.104.040.A.12 (Site Development Review) of the Dublin Municipal Code is hereby amended to read as follows:

“12. Wireless Communications Facilities. All new wireless communication facilities and modifications to wireless communication facilities that are not in conformance with an approved Site Development Review. These facilities are also subject to the provisions of Chapter 8.92, Wireless Communication Facilities.”

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Dublin hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

Section 8. Posting. The City Clerk of the City of Dublin shall cause this Ordinance to be posted in at least three (3) public places in the City of Dublin in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this 19th day of December, 2017, by the following vote:

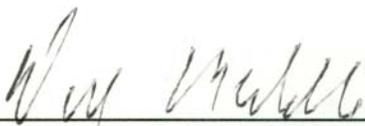
AYES: Councilmembers Biddle, Gupta and Hernandez

NOES:

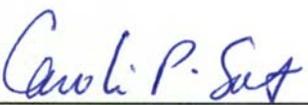
ABSENT: Mayor Haubert

ABSTAIN:

RECUSED: Councilmember Goel



Mayor Pro Tempore

ATTEST: 

City Clerk