

Can You Hear Me Now?

Innovative Wireless Regulations and Best Practices

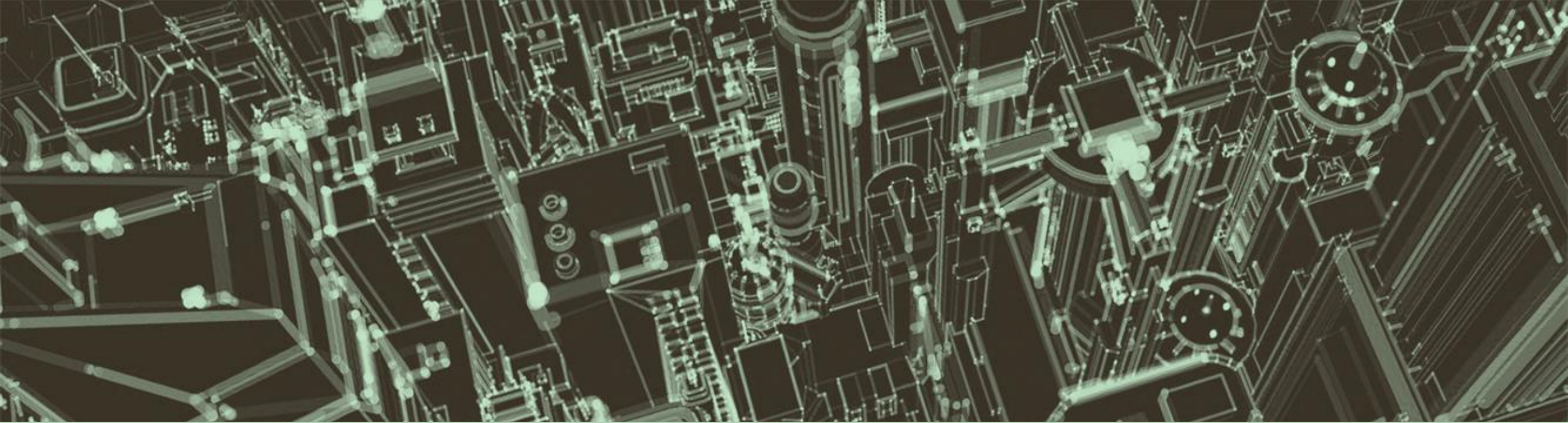
Ken Fellman - Derek Holcomb – Dr. Jonathan Kramer - Bob Widner

March 8, 2018



Speakers

- **Robert (Bob) Widner - Moderator**
 - City Attorney, City of Centennial (Widner Juran LLP)
- **Kenneth S. Fellman**
 - President, Kissinger & Fellman, P.C.
- **Derek Holcomb, AICP**
 - Deputy Director of Community Development, City of Centennial
- **Dr. Jonathan Kramer**
 - Principal Attorney-Managing Partner, Telecom Law Firm, P.C.



Legal and Regulatory Framework

**Existing Federal Statutory Requirements,
FCC Regulations and State Statutes**



Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Telecommunications Act of 1996, 47 U.S.C. Sec. 332 (c)(7)
- “***No unreasonable discrimination***” requirements:
 - The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services

Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Telecommunications Act of 1996, 47 U.S.C. Sec. 332 (c)(7)
- “*No prohibition of service*” requirements:
 - The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not prohibit or have the effect of prohibiting the provision of personal wireless services

Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Telecommunications Act of 1996, 47 U.S.C. Sec. 332 (c)(7)
 - (ii) Must act **within a reasonable period of time**
 - (iii) A decision to deny **shall be in writing and supported by substantial evidence contained in a written record**
 - (iv) **Cannot regulate on the basis of the environmental effects of radio frequency (RF) emissions** to the extent that such facilities comply with the Commission's regulations concerning such emissions
 - *This is likely to be a big issue, as more sites, at lower heights begin appearing in residential neighborhoods*
 - *What would really help would be FCC action updating the RF standards*

Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Telecommunications Act of 1996, 47 U.S.C. Sec. 332 (c)(7)
- **Shot Clock Issues**
 - Relates to the placement, construction, and modification of personal wireless service *facilities*
 - Applies to service providers and infrastructure owners
 - 90 days for collocations (that are not mandatory collocations under Section 6409 of the Spectrum Act) and 150 days for new facilities

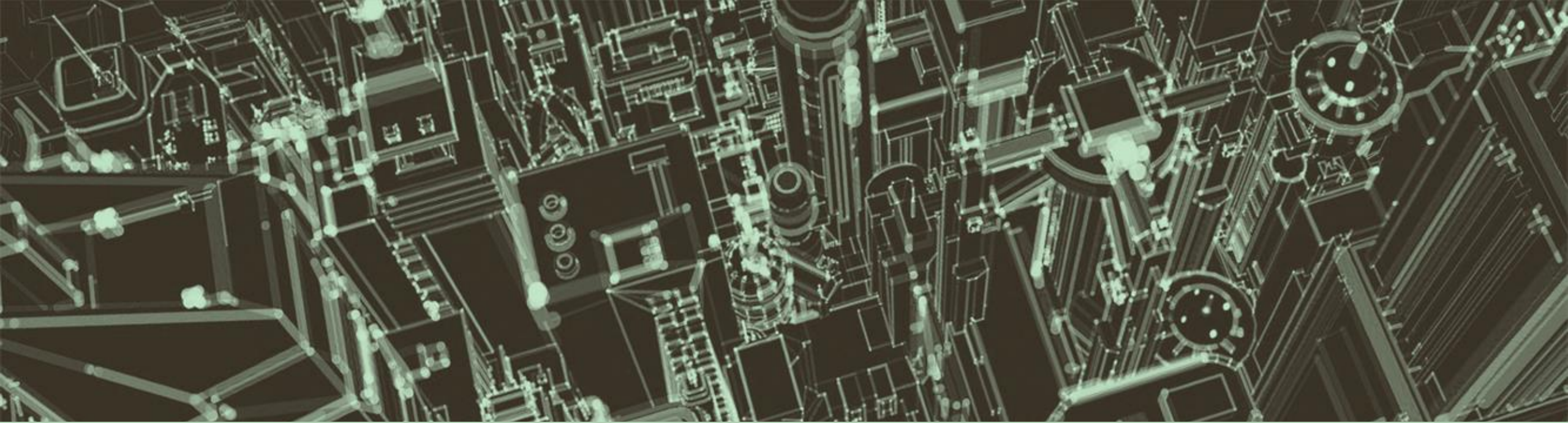
Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Section 6409 – Mandatory Collocations
- Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (which has come to be known as the Spectrum Act because of its coverage of radio frequency spectrum issues) mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station
- In October 2014, the FCC unanimously approved rules interpreting Section 6409(a)

Existing Federal Statutory Requirements, FCC Regulations and State Statutes

- Section 6409 – Mandatory Collocations
- **Terms addressed in the statute and later defined by the FCC:**
 - Base station
 - Collocation
 - Eligible Facilities Request
 - Eligible Support Structure
 - Existing
 - Site
 - Substantial Change
 - Transmission Equipment
 - Tower

NOTE: *An eligible facilities request that does not result in a substantial change in physical dimension **must be approved** within 60 days of a complete application*



Legal and Regulatory Framework

Small Cell Legislation & Pending Proceedings



Small Cell Legislation

- **Common elements in many bills:**
 - 28 cubic feet for BTS; 6 cubic feet for antennas; tower, ancillary equipment not counted in cubic foot calculations
 - Mandatory access to municipal property for an illusory attachment fee (fractional maintenance cost)
 - No in-kind services permitted, even in lieu of the illusory fee
 - Multiple applications under one sharply reduced application fee (think: unfunded state mandate)
 - Shorted deemed complete, processing time lines
 - Some small sites in PROW by right – no notice to the local government
 - Small cells in every zone
 - Obligation to provide AnyG Service to _____ % of the state

Small Cell Legislation

- Yz
 - **Today** ~ 362,000 cell sites in U.S.;
 - **2020-22** ~ 1,000,000 cell sites in U.S.
- Decrease in general funds (public safety, services) from cell site attachment fees requires new fees, taxes to maintain current levels
- Shifting rental fee burdens from users, shareholders to the general population

Oven Fresh

MMN-MMM



28 CUBIC
FEET OF
SMALL
CELL
GOODNESS



Small Cell Legislation

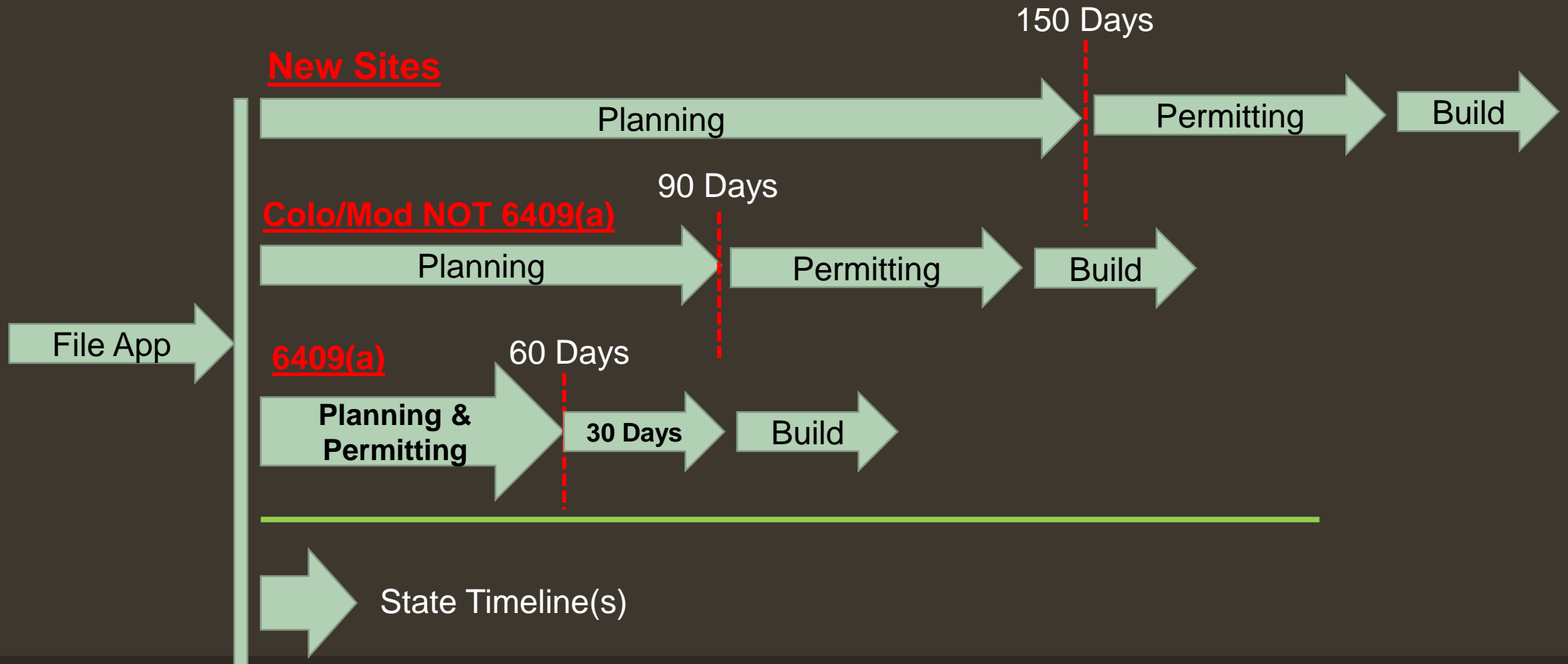
- New Math?

- Completely randomly selected example: **Arvada, Colorado**
- LN: Land 38.67 sq mi
- CX: Carriers: ATT, VzW, S, TMUS
- DN: Density of SCs per SQ MI = 10...25

- $SC = LM \times CX \times DN$
- $SC = 38.67 \times 4 \times 10...25$
- $SC = 1,547... 3,867$

Small Cell Legislation

- Process...now it depends

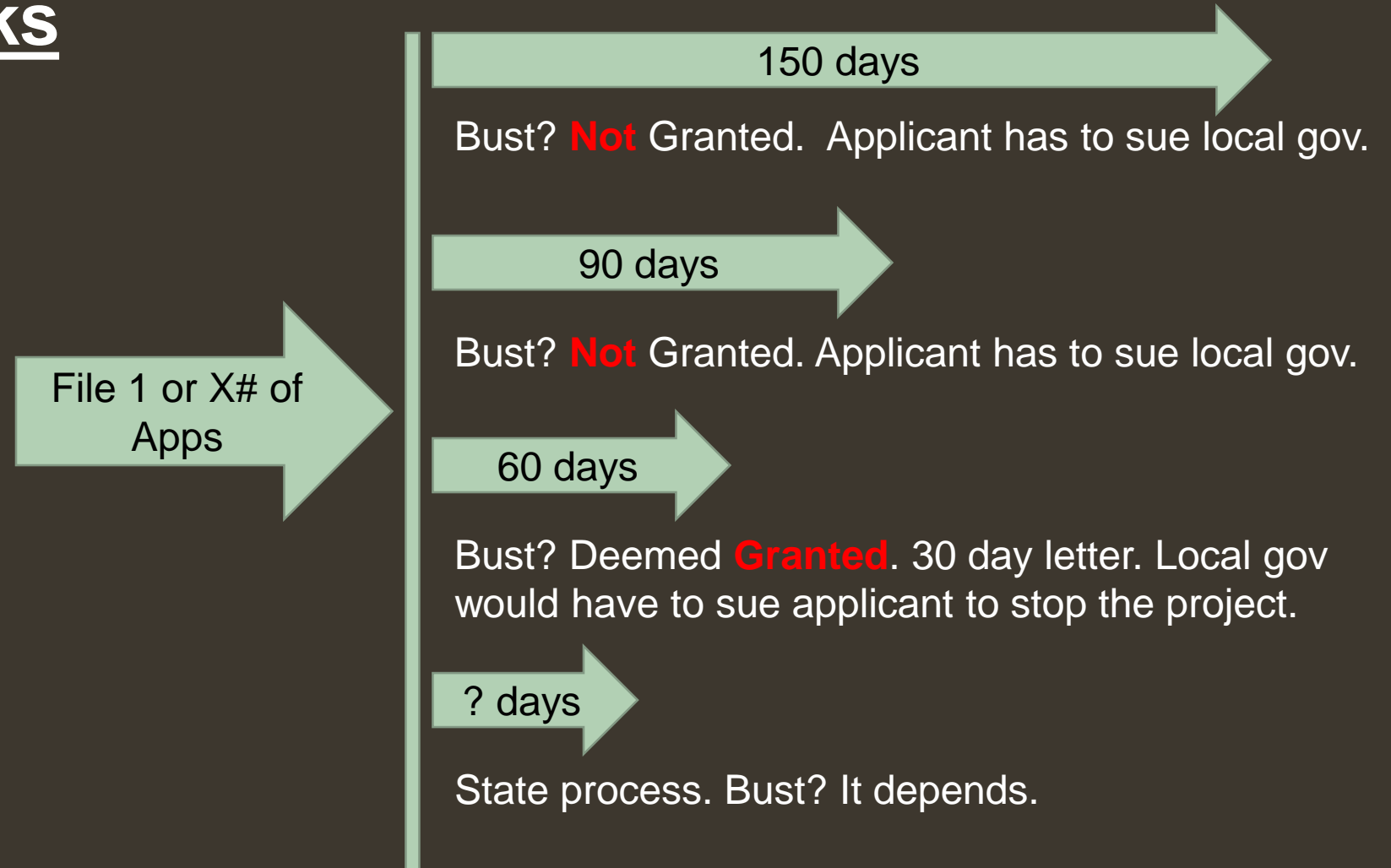


Small Cell Legislation

- The 3 Shot Clocks

A local moratorium is still permissible under the FCC's rules, but...

a local moratorium will no longer toll the time for an application review/decision.



Small Cell Regulations

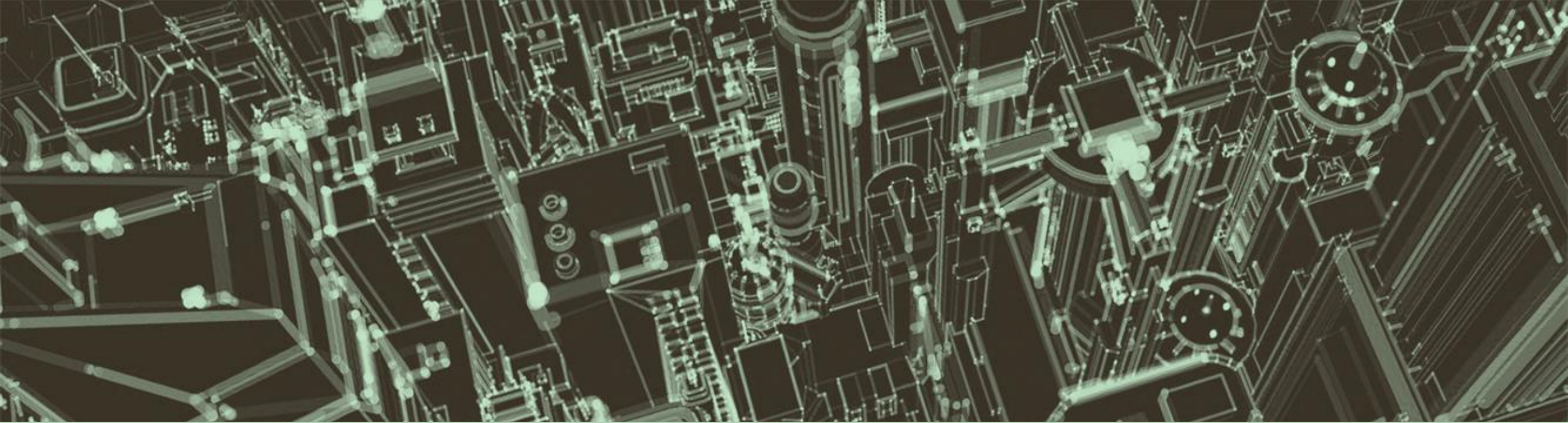
- **FCC – Issues Related to Wireless Facilities Siting**
 - *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 -- Notice of Proposed Rulemaking and Notice of Inquiry
 - Broadband Deployment Advisory Committee (BDAC) working groups presented their reports to the BDAC at the Jan. 23-24, 2018 BDAC meeting.
 - Local government representatives issued “Minority Report” and are seeking support from local governments.

Small Cell Legislation

- Congress – Issues Related to Wireless Facilities Siting
 - **Senate 5G (Wireless siting) bill** -- S. RES. 242: Sense of the Senate bill about 5th generation mobile networks (5G) and to promote economic development and digital innovation throughout the United States.
 - **Gigabit Opportunity Act** – (S. 1013; HB. 2870) – Would require a locality to streamline its permitting & ROW access practices for providers to qualify for tax breaks to build broadband in that community.

Small Cell Legislation

- Congress – Issues Related to Wireless Facilities Siting
 - **Senate Commerce**: draft bill from Sens. Thune/Schatz – preemption of local ROW management & compensation and land use authority; likely House companion from Rep. Blackburn.
 - **Alternative**: The draft Senate Commerce bill, along with other broadband legislation, might be rolled into an infrastructure bill.
 - Possible result: An offer localities can't refuse; if they want infrastructure dollars, they must grant providers subsidized and quick access to their ROW and other property.



Legal and Regulatory Framework

Examples of Other Communities



Examples of Other Communities



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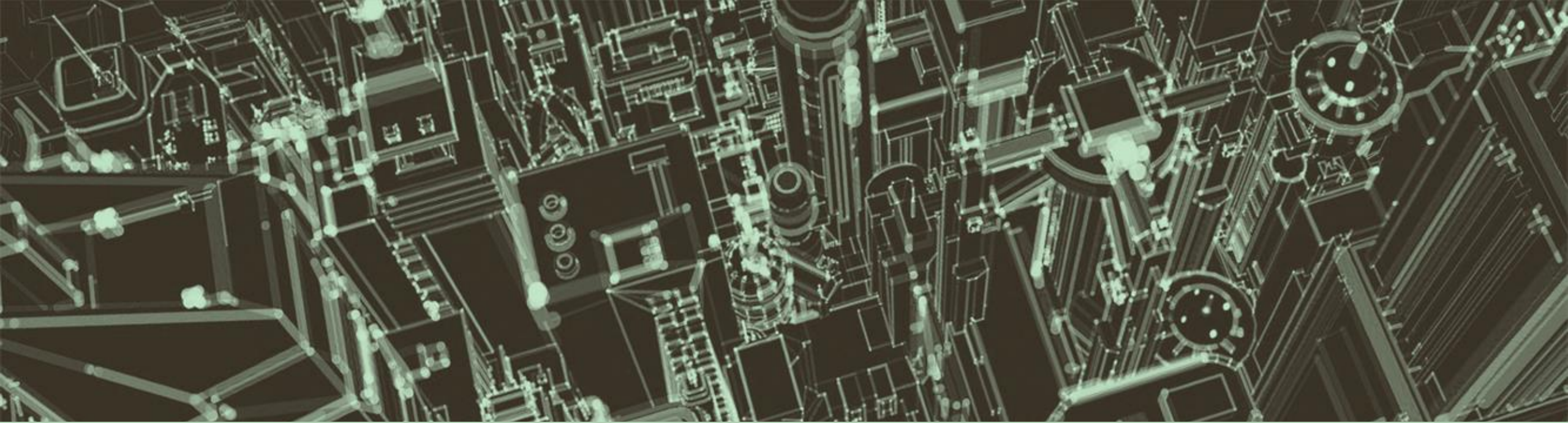
Examples of Other Communities



Examples of Other Communities

Tom Lehrer – “New Math” (1965)

“...In the new approach, as you know, the important thing is to understand what you’re doing, rather than to get the right answer.”



City of Centennial Case Study

2017 Ordinance Updating WCF Regulations



City of Centennial

- **Centennial's History of Regulations**

- *2001 Land Development Code (LDC)*
- *2011 LDC (Entirely new LDC). Added design regulations. 'Limited' use*
- *2013 Update to LDC. 'Eligible Facility' Upgrades*
- ***2017 Rewrite of the wireless code. Approved June 5, 2017***

City of Centennial

- **2017 LDC Update (Ord. 2017-O-10)**
 - Staff held a Study Session with City Council in February 2017 to evaluate the existing LDC.
 - Staff expressed concern regarding the lack of regulations for WCF in the rights-of-way





City of Centennial

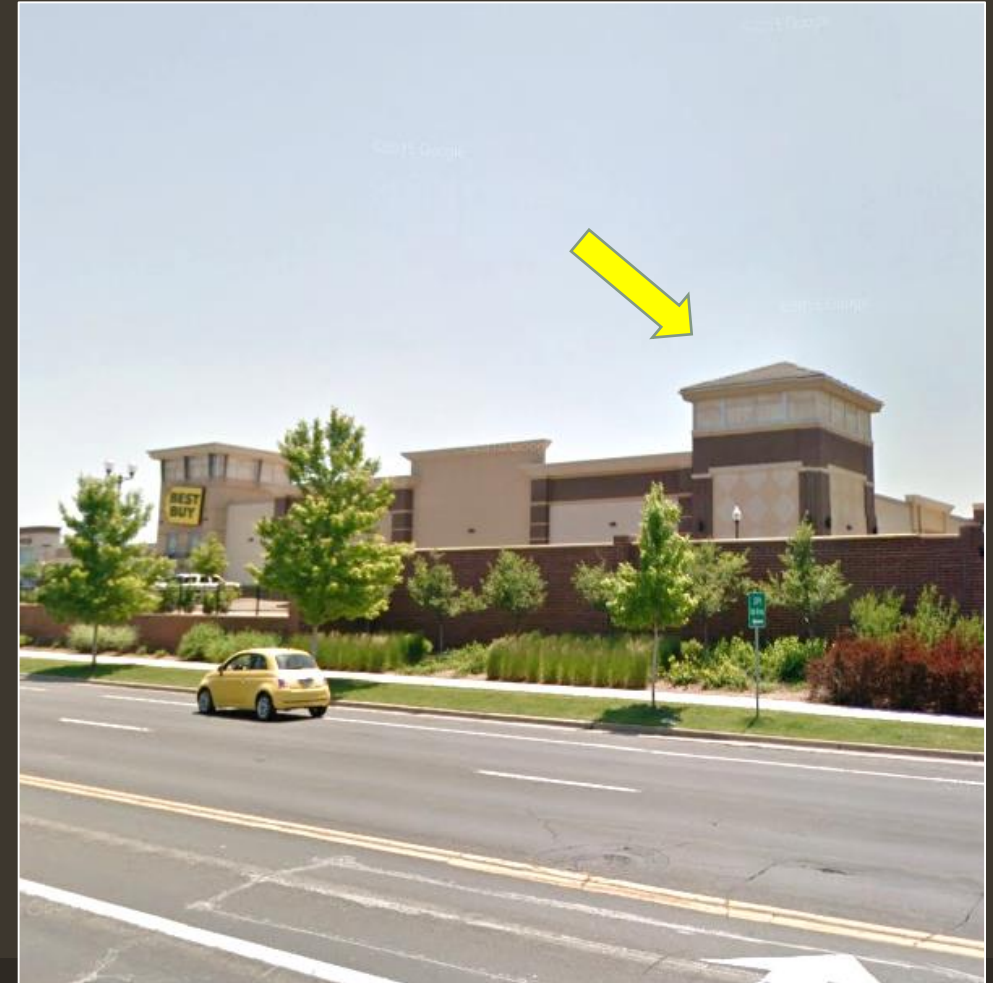
- 2017 LDC Update (Ord. 2017-O-10)
 - Staff proposed an ordinance implementing new regulations for WCF in the right-of-way
 - *Spacing of facilities*
 - *Maximum heights*
 - *Design requirements*
 - Council expressed a desire to enhance the design requirements for ALL WCFs, not just those in the right-of-way

City of Centennial

- **2017 LDC Update (Ord. 2017-O-10)**
 - Drafted ordinance based on Council/ P&Z direction and feedback from our wireless consultant (KF) [February- March]
 - Met with telecommunications providers to discuss the regulations [March – May]
 - Made adjustments based on feedback from the industry [April – May]
 - Council adopted ordinance! [June]

City of Centennial

- WCFs must utilize “Camouflage and Concealment Design”



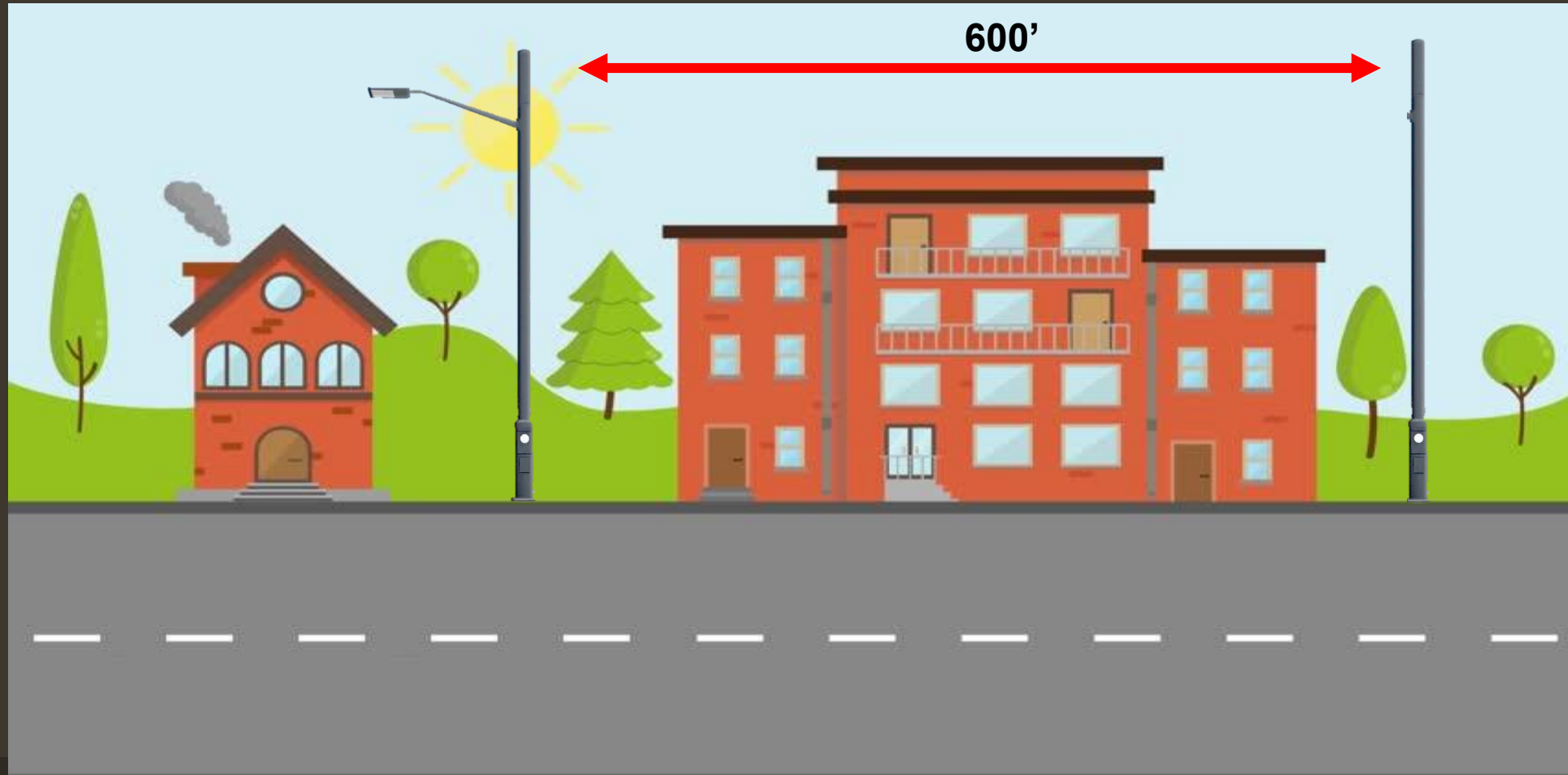
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- WCFs in the Right-of-Way Must Use City-Approved Design



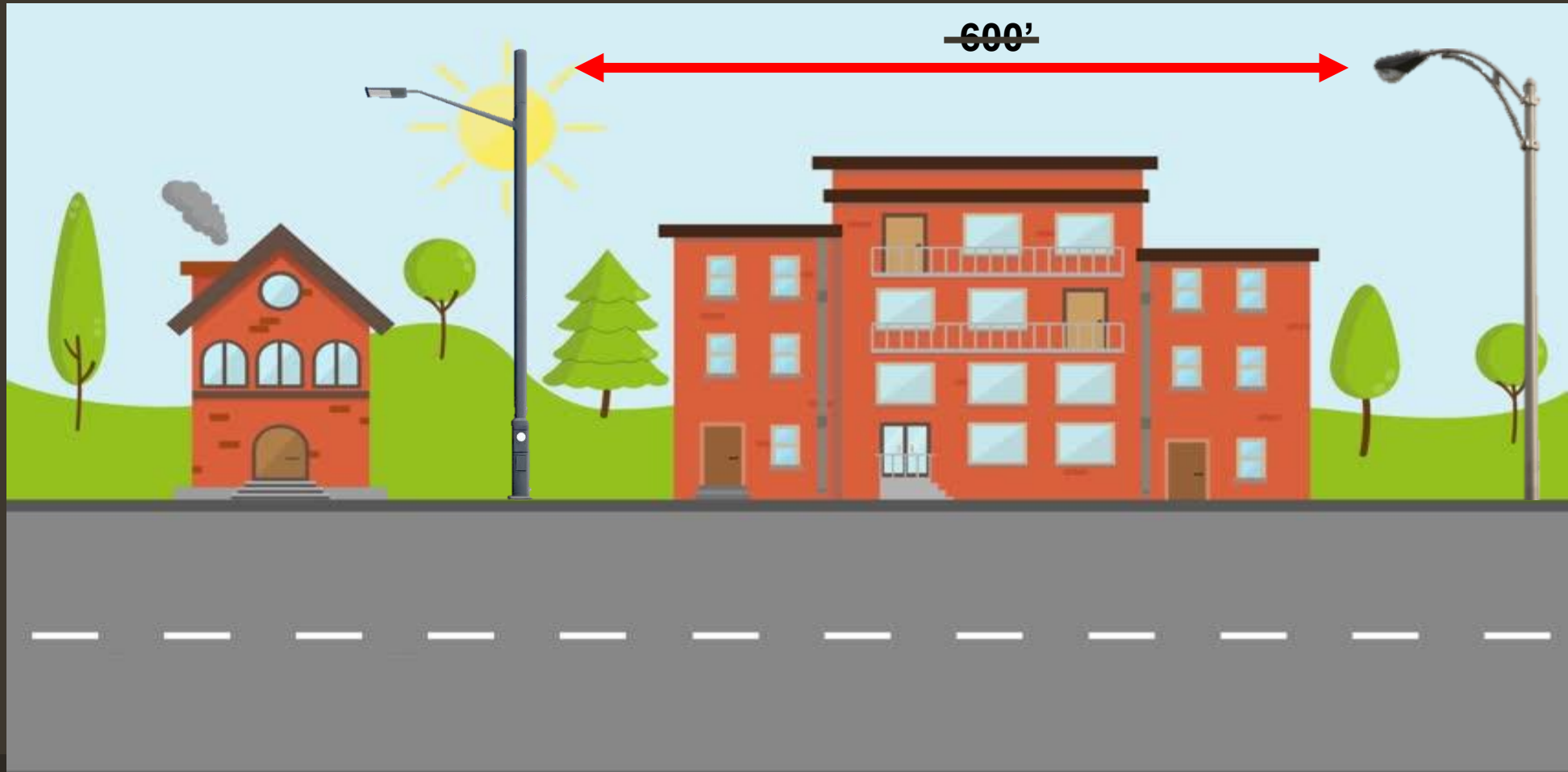
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- WCFs in the Right-of-Way Must be Spaced 600 feet apart



City of Centennial

- 600 foot spacing can be waived if replacing an existing light pole



City of Centennial

- 600 foot spacing can be waived if replacing an existing light pole



Necessary at intersections, where corners are less than 600 feet apart

City of Centennial

- WCFs in the Right-of-Way - Maximum Height
 - **30 feet** within 250 feet of residential and educational land uses
 - **35 feet** within 250 feet of open space properties
 - **40 feet** everywhere else
- Attachments limited to 10 feet above existing infrastructure, or 5 feet if the infrastructure is already over these heights.

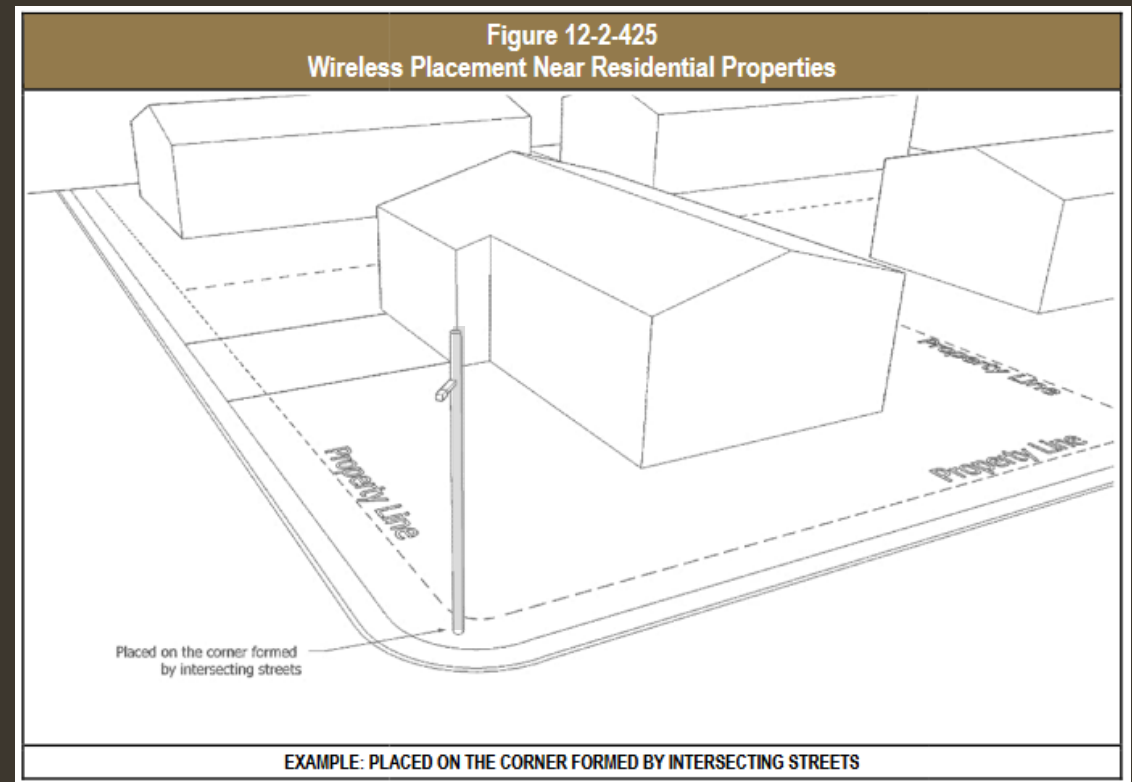
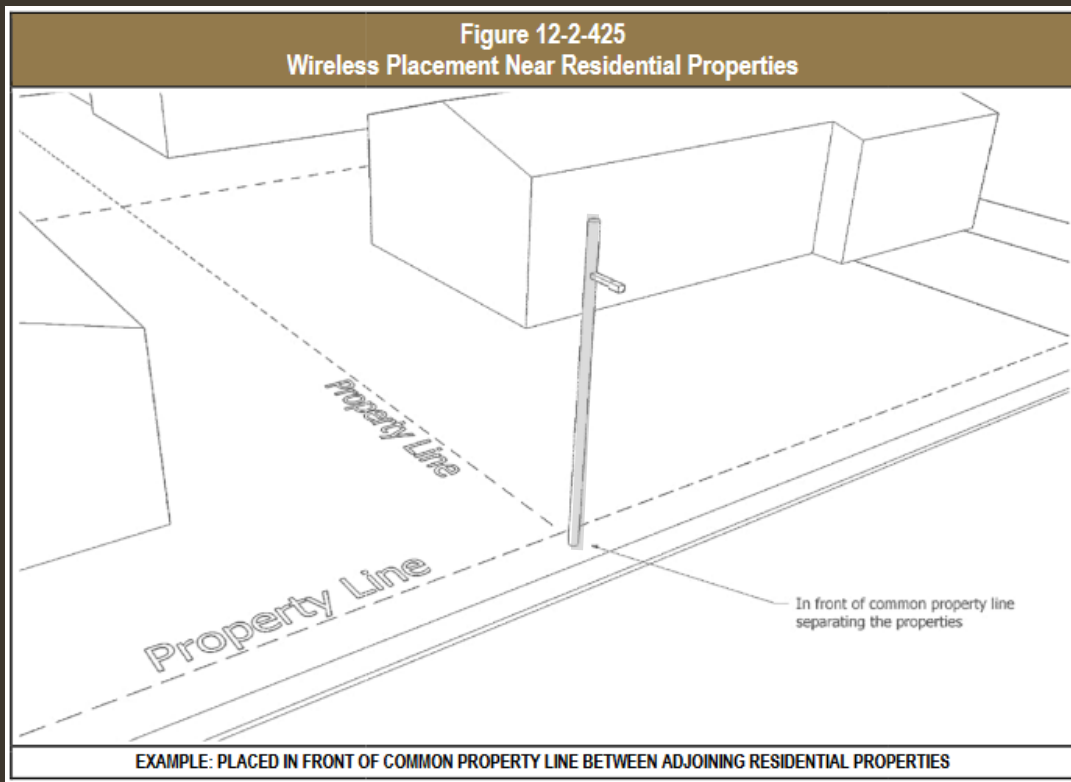
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- WCFs in the Right-of-Way – Ground Based Equipment
 - Underground (or partially underground) vault, no more than **36 inches above grade**; or
 - Co-located in traffic signal box



City of Centennial

- WCFs in the Right-of-Way – Placement Near Residential
 - Regulated to minimize impacts equitably

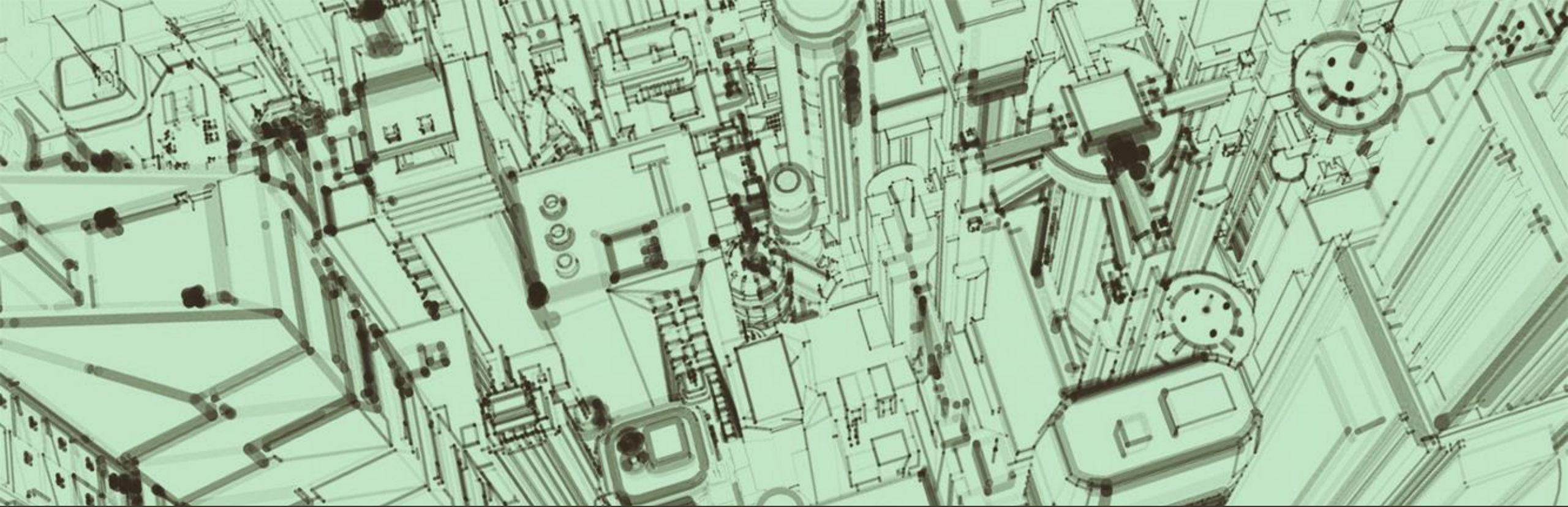


City of Centennial

- WCFs in the Right-of-Way – Conditional Use Process
 - For those WCF that do not comply with spacing/height/design
 - These uses commonly have the potential for various adverse impacts such as noise, visual and aesthetic impacts, which if unmitigated, could undermine the integrity of the zoning district.
- WCF Conditional Use applications are decided by City Council.
 - Six (6) criteria of approval

City of Centennial

- WCFs in the Right-of-Way – Master License Agreements
 - One agreement executed in January 2018
 - Two others within 30-60 days



? Q&A Time ?

