

**DRAFT WIRELESS FACILITIES ORDINANCE
FOR FACILITIES COVERED UNDER SECTION 6409(a)
OF THE MIDDLE CLASS TAX RELIEF ACT OF 2012**

City of Brentwood, California

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Section 17.790.010 – PURPOSE

- (A) The purpose of this chapter is to adopt reasonable regulations and procedures, consistent with and subject to federal and California state law, for compliance with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in Title 47 of the United States Code section 1455(a), and related Federal Communications Commission regulations codified in Title 47 of the Code of Federal Regulations section 1.40001 *et seq.*
- (1) Section 6409(a) generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. FCC regulations interpret the statute and create

procedural rules for local review, which generally preempt subjective land-use regulations, limit application content requirements and provide the applicant with a “deemed granted” remedy when the government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in Title 47 of the United States Code section 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., Wi-Fi, satellite, microwave backhaul, etc.).

- (2) The City Council finds that the partial overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and deliberately planned community development in accordance with local values. The City Council further finds that a separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a chapter devoted to Section 6409(a) will best prevent such confusion.
 - (3) Accordingly, the City of Brentwood adopts this chapter to reasonably regulate requests submitted for approval under Section 6409(a) to collocate, remove or replace transmission equipment at an existing wireless tower or base station, in a manner that complies with federal law and protects and promotes the public health, safety and welfare.
- (B) This chapter does not intend to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among providers of functionally equivalent personal wireless services; (3) regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such emission comply with all applicable FCC regulations; (4) prohibit or effectively prohibit any collocation or modification that the City may not deny under California or federal law; or (5) allow the City to preempt any applicable California or federal law.

Section 17.790.020 – DEFINITIONS

Definitions in this section 17.790.020 may contain quotations and/or citations to Title 47 of the Code of Federal Regulations section 1.40001 *et seq.* In the event that any referenced section is amended, creating a conflict between the quoted definition and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

“base station” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as follows:

A structure or equipment at a fixed location that enables [FCC]-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in [47 C.F.R. § 1.40001(b)(9)] or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

Note: 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 one designed to bear the additional weight from wireless equipment constitutes a base station.

“**City**” means the City of Brentwood, California.

“**City Council**” means the City Council of the City of Brentwood, California.

“**Code**” means the City of Brentwood Municipal Code, as may be amended.

“**collocation**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment

on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.

“**Director**” means the Director of Community Development of the City of Brentwood, California, or his or her designee.

“**eligible facilities request**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

“**eligible support structure**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”

“**existing**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that “[a] constructed tower or base station is existing for purposes of [the FCC’s Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”

“**distributed antenna system**” or “**DAS**” means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.

“**FAA**” means the Federal Aviation Administration or its duly appointed successor agency.

“**FCC**” means the Federal Communications Commission or its duly appointed successor agency.

“**RF**” means “radio frequency” or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“**Section 6409(a)**” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

“**site**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that “[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

“**substantial change**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.

- (A) For towers outside the public rights-of-way, a substantial change occurs when:
 - (1) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - (2) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - (3) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (4) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (B) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - (1) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - (2) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or

- (3) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - (4) the proposed collocation or modification 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
 - (5) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (C) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (1) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Community Development Director; or
 - (2) 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 related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

“tower” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

“transmission equipment” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as “[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not

limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.”

“**wireless**” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Section 17.790.030 – APPLICABILITY

This chapter applies to all permit applications for a collocation or modification to an existing wireless tower or base station submitted for approval pursuant to Section 6409(a). However, the applicant may alternatively elect to seek either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit under Code chapter 17.780.

Section 17.790.040 – SECTION 6409(A) COLLOCATION/MODIFICATION PERMIT

Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted for approval under Section 6409(a) shall require a Section 6409(a) Collocation/Modification Permit subject to the Director’s approval, conditional approval or denial under the standards and procedures contained in this chapter.

Section 17.790.050 – OTHER REGULATORY APPROVALS REQUIRED

No collocation or modification approved under any Section 6409(a) Collocation/Modification Permit may occur unless the applicant also obtains all other permits or regulatory approvals from other City departments and state or federal agencies. An applicant must obtain a Section 6409(a) Collocation/Modification Permit before it may apply for permits or other regulatory approvals from other City departments. Furthermore, any Section 6409(a) Collocation/Modification Permit granted under this chapter shall remain subject to the lawful conditions and/or requirements associated with such other permits or regulatory approvals from other City departments and state or federal agencies.

Section 17.790.060 – PERMIT APPLICATIONS; SUBMITTAL AND REVIEW PROCEDURES

- (A) **Permit Application Required.** The Director may not grant any Section 6409(a) Collocation/Modification Permit unless the applicant has submitted a complete application.
- (B) **Permit Application Content.** This section governs minimum requirements for permit application content, and procedures for additions and/or modifications to Section 6409(a) Collocation/Modification Permit applications. The City Council directs and authorizes the Director to develop and publish application forms, checklists, informational handouts and

other related materials that describe required materials and information for a complete application in any publicly stated form. Without further authorization from the City Council, the Director may from time-to-time update and alter the permit application forms, checklists, informational handouts and other related materials as the Director deems necessary or appropriate to respond to regulatory, technological or other changes. The materials required under this section 17.790.060(B) are minimum requirements for any application the Director may develop.

- (1) **Application Fee Deposit.** The applicable permit application fee established by City Council resolution.
- (2) **Prior Regulatory Approvals.** Evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless services utilizing the proposed wireless facility. For any prior conditional approval(s) associated with the wireless facility, the applicant must submit copies of all conditions of approval. Alternatively, a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless facility at the time it was constructed or modified.
- (3) **Site Development Plans.** A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
- (4) **Equipment Specifications.** Specifications that show the height, width, depth and weight for all proposed equipment. For example, dimensioned drawings or the manufacturer's technical specifications would satisfy this requirement.
- (5) **Photographs and Photo Simulations.** Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least one photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.
- (6) **RF Exposure Compliance Report.** An RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational

limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

- (7) **Section 6409(a) Justification Analysis.** A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 *et seq.* require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.
- (8) **Noise Study.** A noise study prepared and certified by an engineer for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the City’s noise regulations. The noise study must also include an analysis of the manufacturers’ specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
- (C) **Pre-Application Meeting Appointment.** Prior to application submittal, applicants must schedule and attend a pre-application meeting with design review staff for all Section 6409(a) Collocation/Modification Permit applications. Such pre-application meeting is intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project qualifies for a Section 6409(a) Collocation/Modification Permit; any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. Applicants must submit a written request (mail or email) for an appointment. City staff shall endeavor to provide applicants with an appointment within approximately five (5) working days after receipt of a written request.
- (D) **Application Submittal Appointment.** All applications for a Section 6409(a) Collocation/Modification Permit must be submitted to the City at a pre-scheduled appointment. Applicants may submit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the City. Applicants must submit a written request (mail or email) for an appointment. City staff shall endeavor to provide applicants with an appointment within approximately five (5) working days after receipt of a written request.
- (E) **Application Resubmittal Appointment.** All application resubmittals must be tendered to the City at a pre-scheduled appointment. Applicants may resubmit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. Applicants must submit a written request (mail or email)

for an appointment. City staff shall endeavor to provide applicants with an appointment within approximately five (5) working days after receipt of a written request.

- (F) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, an application will be automatically deemed withdrawn when an applicant fails to tender a substantive response within sixty (60) days after the City deems the application incomplete in a written notice to the applicant. The Director may in the Director's discretion grant a written extension for up to an additional thirty (30) days upon a written request for an extension received prior to the 60th day. The Director may grant further written extensions only for good cause, which includes circumstances outside the applicant's reasonable control.

Section 17.790.070 – NOTICE

- (A) **Manner of Notice.** Within 15 days after an applicant submits an application for a Section 6409(a) Collocation/Modification Permit, written notice of the application shall be sent by First Class United States Mail to:
- (1) the applicant or its duly authorized agent;
 - (2) the property owner or its duly authorized agent;
 - (3) all real property owners within 300 feet from the subject site as shown on the latest equalized assessment rolls;
 - (4) any person who has filed a written request with either the City Clerk or the City Council; and
 - (5) any City department that will be expected to review the application.
- (B) **Notice Content.** The notice required under this section shall include all the following information:
- (1) a general explanation of the proposed collocation or modification;
 - (2) the following statement: "This notice is for information purposes only; no public hearing will be held for this application. Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement."; and
 - (3) a general description, in text or by diagram, of the location of the real property that is the subject of the application.

Section 17.790.080 – APPROVALS; DENIALS WITHOUT PREJUDICE

Federal regulations dictate the criteria for approval or denial of approval permit application submitted under Section 6409(a). The findings for approval and criteria for denial without

prejudice are derived from, and shall be interpreted and applied in a manner consistent with, such federal regulations.

- (A) **Findings for Approval.** The Director may approve or conditionally approve an application for a Section 6409(a) Collocation/Modification Permit only when the Director finds all of the following:
 - (1) the application involves the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - (2) the proposed changes would not cause a substantial change.
- (B) **Criteria for a Denial Without Prejudice.** Notwithstanding section 17.790.080(A), the Director shall not approve an application for a Section 6409(a) Collocation/Modification Permit when the Director finds that the proposed collocation or modification:
 - (1) violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
 - (2) involves a structure constructed or modified without all approvals required at the time of the construction or modification; or
 - (3) involves the replacement of the entire support structure; or
 - (4) does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
- (C) **All Section 6409(a) Permit Denials Are Without Prejudice.** Any “denial” of a Section 6409(a) Permit application shall be limited to only the applicant request for approval pursuant to Section 6409(a) and shall be without prejudice to the applicant, the real property owner or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, land use permit or Section 6409(a) Permit as appropriate.
- (D) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the City’s authority to conditionally approve an application for a Section 6409(a) Collocation/Modification Permit to protect and promote the public health, safety and welfare.

Section 17.790.090 – Standard Conditions of Approval

Any Section 6409(a) Collocation/Modification Permit approved or deemed-granted by the operation of federal law shall be automatically subject to the conditions of approval described in this section 17.790.090.

- (A) **Permit Duration.** The City’s grant or grant by operation of law of a Section 6409(a) Collocation/Modification Permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City’s grant or grant by operation of law of a Section 6409(a) Collocation/Modification Permit will not extend the permit term for any conditional use permit, land use permit or other

underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

- (B) **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) Collocation/Modification Permit(s), such permit(s) shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) Collocation/Modification Permit when it has submitted an application for either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit for those improvements before the one-year period ends. The Director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
- (C) **No Waiver of Standing.** The City's grant or grant by operation of law of a Section 6409(a) Collocation/Modification Permit does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Collocation/Modification Permit.
- (D) **Compliance with All Applicable Laws.** Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- (E) **Inspections; Emergencies.** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (F) **Contact Information for Responsible Parties.** Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Director upon permittee's receipt of the Director's written request.
- (G) **Indemnities.** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or

independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (H) **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (I) **General Maintenance.** The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- (J) **Graffiti Abatement.** Permittee shall remove any graffiti on the wireless facility at Permittee's sole expense subject to the provisions of Chapter 9.90.

Section 17.790.100 – NOTICE OF DECISION; APPEALS

- (A) **Notice of the Decision.** Within five working days after final decision by the approval authority, notice of the decision shall be mailed to the applicant at the address shown on the application and to all other persons who have filed a written request for notice of the decision with the Community Development Department. The City shall provide the reasons for any denial either in the written decision or in some other written record available at the same time as the denial.
- (B) **Appeal.** Subject to the applicable federal timeframe for permit application review (accounting for any tolling periods), any aggrieved party may appeal an action of the Director as provided in chapter 17.880 of this Code. The Planning Commission shall serve as the hearing body for all appeals of all actions of the Director taken pursuant to this chapter, subject to further appeal to the City Council.

Section 17.790.110 – INDEPENDENT CONSULTANT REVIEW

- (A) **Authorization.** The City Council authorizes the Director to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the Director in connection with any permit application.
- (B) **Scope.** Subject to the provisions of subsection (C), the Director may require the applicant to provide, at applicant's sole cost, independent consultant review on any issue that

involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:

- (1) permit application completeness or accuracy;
 - (2) planned compliance with applicable RF exposure standards;
 - (3) whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
 - (4) whether technically feasible and potentially available alternative locations and designs exist;
 - (5) the applicability, reliability and sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
 - (6) any other issue that requires expert or specialized knowledge identified by the Director.
- (C) **Deposit.** The applicant must pay for the cost of any review required under subsection (B) and for the technical consultant's testimony in any hearing as requested by the Director and must provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the Director. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the Director shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required in the Code.

Section 17.790.120 – COMPLIANCE OBLIGATIONS

An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Code, this chapter, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.

Section 17.790.130 – CONFLICTS WITH PRIOR ORDINANCES

If the provisions in this chapter conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this chapter, the provisions in this chapter will control.

Section 17.790.140 – SEVERABILITY

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.

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