

**DRAFT WIRELESS FACILITIES ORDINANCE
FOR FACILITIES NOT COVERED UNDER SECTION 6409(a) OF THE
MIDDLE CLASS TAX RELIEF ACT OF 2012**

City of Brentwood, California

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Section 17.780.010 – PURPOSE

- (A) The purpose of this chapter is to reasonably regulate, to the extent permitted by California and federal law, the installation, operation, collocation, modification and

removal of wireless facilities in the City of Brentwood in a manner that protects and promotes public health, safety and welfare, and balances the benefits that flow from robust wireless services with the unique and historic character, aesthetics and local values of the City.

- (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 RF emissions to the extent that such emissions 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 17.780.020 – DEFINITIONS

“camouflaged” means a wireless facility to which the applicant applies some concealment techniques in order to blend the equipment into the surrounding area or to appear to be an object that is congruent with its environment, but the equipment or the concealment technique is readily apparent to the observer.

Examples include, but are not limited to, (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; or (3) faux-trees either as the only tree in the vicinity or inconsistent with other tree species in the vicinity.

“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.

“CPCN” means a “Certificate of Public Convenience and Necessity” granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

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

“Director of Public Works” means the Director of Public Works or City Engineer of the City of Brentwood, California, or his or her respective designee.

“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.

“OTARD” means antennas covered by the FCC’s “Over-the-Air Reception Devices” rule in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended.

“personal wireless services” means the same as provided in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

“personal wireless service facilities” means the same as provided in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended, which defines the term as “facilities for the provision of personal wireless services.”

“public rights-of-way” means land which by deed, conveyance, agreement, easement, dedication, usage or process of law, is reserved and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the City. Public right-of-way includes but is not limited to street, roadway, planter strip and sidewalk.

“radome” means a weatherproofed enclosure (typically constructed from fiberglass or plastic material) that protects and conceals an antenna or antennas contained therein.

“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.

“stealth facility” means a wireless facility with concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.

Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying building in architectural style, physical proportion and construction-materials quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

“unconcealed” means a wireless facility that is not a stealth facility and has no or effectively no camouflage techniques applied such that the wireless equipment is plainly obvious to the observer.

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

“wireless facility” or **“wireless facilities”** means an installation used to transmit and/or receive signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.

Section 17.780.030 – APPLICABILITY

- (A) **Applicable Facilities.** This chapter applies to applications submitted after the effective date of this chapter for (1) new facilities and (2) collocations or modifications to existing facilities not submitted for approval pursuant to Section 6409(a).
- (B) **Nonconforming Facilities.** Any existing facility within the City’s jurisdictional boundaries that does not conform to the requirements in this chapter is deemed a “nonconforming facility” as defined in Code section 17.610.003(D). All nonconforming facilities are subject to the provisions in Chapter 17.610, to the extent permitted under federal and state law.
- (C) **Exempted Facilities.** Notwithstanding section 17.780.030(A), this chapter shall not apply to: (1) facilities owned and operated by the City for the City’s use; (2) amateur radio facilities; (3) OTARD antenna facilities; (4) facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D; and (5) applications to collocate, replace or remove transmission equipment at an existing wireless tower or base station without a substantial change in physical dimensions and submitted for approval under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

Section 17.780.040 – REQUIRED PERMITS

All proposed facilities and collocations or modifications to facilities governed under this chapter shall be subject to either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit from the City, unless exempted from this chapter under section 17.780.030(C). Collocations or modifications submitted for approval pursuant to Section 6409(a) are governed under Code chapter 17.190. This section 17.780.040 delineates the required permit based on the proposed project.

- (A) **Conditional Wireless Facilities Permit.** A Conditional Wireless Facilities Permit is required for any new facilities and collocations or modifications to existing facilities as follows:
 - (1) all unconcealed facilities;
 - (2) all facilities in discouraged locations, as defined in section 17.780.090(B);
 - (3) all camouflaged (non-stealth) facilities in preferred locations, as defined in 17.780.090(A); and
 - (4) all other facilities that do not meet the criteria for either an Administrative Wireless Facilities Permit under section 17.780.040(B) or a Section 6409(a) Collocation/Modification Permit under chapter 17.790.
- (B) **Administrative Wireless Facilities Permit.** An Administrative Wireless Facilities Permit is required for any new facilities and collocations or modifications to existing facilities as follows:

- (1) all stealth facilities in preferred location without the need for an exception pursuant to Code section 17.780.160(A); and
- (2) all camouflaged or stealth facilities in the public rights-of-way.

Section 17.780.050 – OTHER REGULATORY APPROVALS

In addition to any Conditional Wireless Facilities Permit or Administrative Wireless Facilities Permit that may be required, the applicant must obtain all other required prior permits or other approvals from other City departments, or State or Federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, State or Federal agencies.

Section 17.780.060 – CRITERIA FOR A CONDITIONAL WIRELESS FACILITIES PERMIT

The Planning Commission may approve or conditionally approve an application for a Conditional Wireless Facilities Permit only when it finds the proposal meets all the following requirements:

- (A) **Public Hearing Notice.** Public hearing notice has been duly given in accordance with Code section 17.800.009.
- (B) **Deemed-Approval Notice.** No more than 30 days before the applicable timeframe for review expires (90 days for collocations and 150 days for all other applications), the applicant must provide written notice to all persons entitled to notice in accordance with Code section 17.800.009, as modified in this section.
 - (1) The notice must contain the following statement: “California Government Code section 65964.1 may deem the application approved in 30 days unless the City approves or disapproves the application, or the City and applicant reach a mutual tolling agreement.”
 - (2) In addition to all persons entitled to notice in accordance with Code section 17.800.009, the applicant must deliver written notice to the Community Development Department, which contains the same statement required in subsection (B)(1), above, and a mailing list for public notices sent out under this subsection (B). The applicant may tender such notice in person or certified United States mail.
- (C) **Standard Conditional Use Permit Criteria.** The proposed wireless facility conforms to all the criteria for a Conditional Use Permit in accordance with Code section 17.830.005, which may include conformance with the criteria for Design and Site Development Review in accordance with Code chapter 17.820 when applicable.
- (D) **Chapter 17.780 Compliance.** The proposed wireless facility conforms to all the applicable criteria set out in this chapter 17.780, unless the applicant demonstrates that its proposal qualifies for the exception contained in Code section 17.780.160(A).

- (E) **Least Intrusive Means.** The applicant provided factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process (either by the applicant, City staff or the Planning Commission) were technically infeasible or not potentially available.

Section 17.780.070 – CRITERIA FOR AN ADMINISTRATIVE WIRELESS FACILITIES PERMIT

The Director may approve or conditionally approve an application for an Administrative Wireless Facilities Permit only when the Director finds the proposal meets all the following requirements:

- (A) **Deemed-Approval Notice.** No more than 30 days before the applicable timeframe for review expires (90 days for collocations and 150 days for all other applications), the applicant must provide written notice to all persons entitled to notice in accordance with Code section 17.800.009, as modified in this section.
 - (1) The notice must contain the following statement: “California Government Code section 65964.1 may deem the application approved in 30 days unless the City approves or disapproves the application, or the City and applicant reach a mutual tolling agreement.”
 - (2) In addition to all persons entitled to notice in accordance with Code section 17.800.009, the applicant must deliver written notice to the Community Development Department, which contains the same statement required in subsection (B)(1), above, and a mailing list for public notices sent out under this subsection (B). The applicant may tender such notice in person or certified United States mail.
- (B) **Standard Design Review Criteria.** The proposed wireless facility conforms to all the criteria for Design and Site Development Review in accordance with Code chapter 17.820.
- (C) **Chapter 17.780 Compliance.** The proposed wireless facility conforms to all the applicable criteria set out in this chapter 17.780 without need for any exception pursuant to Code section 17.780.160(A).
- (D) **Least Intrusive Means.** The applicant provided factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process (either by the applicant, City staff or the Director) were technically infeasible or not potentially available.

Section 17.780.080 – PERMIT APPLICATIONS; SUBMITTAL AND REVIEW PROCEDURES

All applications for a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit shall be subject to the provisions in this section. Applications for collocations or modifications submitted for approval pursuant to Section 6409(a) are governed under Code chapter 17.790.

- (A) **Permit Application Required.** The City may not grant any applicant a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit unless the applicant has submitted a complete application.

- (B) **Permit Application Content.** This section governs the content of a complete permit application. The City Council authorizes the Director to develop and publish permit application forms, checklists, informational handouts and other related materials. 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 17.780.080(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) **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.
 - (3) **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.
 - (4) **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.
 - (5) **Statement of Purpose.** A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

- (6) **Alternative Sites Analysis.** The applicant must provide a list of all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of such wireless communication facility is not a viable option.
- (7) **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 proposed facilities on poles, vacant properties or in residential zones. 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 may qualify for a Section 6409(a) Collocation/Modification Permit; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. For all other projects, pre-application meetings are strongly encouraged but not required. Design review staff will endeavor to provide applicants with an appointment within approximately five (5) business days after receipt of a written or email request.
- (D) **Application Submittal Appointment.** All applications 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. City staff will endeavor to provide applicants with an appointment within five (5) business days after a request.
- (E) **Application Resubmittal Appointment.** All resubmittals of applications must be submitted 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. City staff will endeavor to provide applicants with an appointment within five (5) business days after receipt of a written or email request.

- (F) **Deemed-Withdrawn Applications.** 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 sole 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 17.780.090 – DEVELOPMENT STANDARDS

- (A) **Preferred Locations.** The City prefers wireless facilities in the locations listed below. Applicants should propose new facilities in these locations to the extent feasible. The list orders locations from most preferred to least preferred:
- (1) City-owned, non-residentially zoned
 - (2) Industrial
 - (3) Commercial
 - (4) Institutional (e.g., schools and churches).
- (B) **Discouraged Locations.** The City discourages wireless facilities in the locations listed below. Applicants should avoid proposals in these locations to the extent feasible, and applications in Discouraged Locations must be for stealth facilities. The list orders locations from most discouraged to least discouraged:
- (1) Residential or Mixed-Use
 - (2) Agricultural
 - (3) Parks and Open Space.
- (C) **General Design Standards and Guidelines.** All proposed wireless facilities and modifications subject to either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit must conform to the design standards and guidelines in this section.
- (1) **Concealment.** Subject to the review and approval of the Director, new wireless facilities and substantial changes to existing wireless facilities must incorporate concealment measures sufficient to render the facility either camouflaged or stealth, as appropriate for the proposed location and design.
 - (2) **Height.** A wireless facility must not exceed the applicable height limit for structures in the applicable zone.
 - (3) **Setbacks.** A wireless facility may not encroach into any applicable setback for structures in the applicable zone.

- (4) **Collocation.** Applicants must design their facilities to accommodate future collocated facilities to the extent feasible.
 - (5) **Fences.** Any fences proposed in connection with a wireless facility must blend with the natural and/or man-made surroundings in the Director's reasonable discretion. The Director may require additional landscape features to screen fences. The Director may not approve barbed wire, razor ribbon, electrified fences or any similar measures to secure a wireless facility, except when the applicant demonstrates that the need for such measures significantly outweighs the potential danger to the public.
 - (6) **Backup or Standby Power Sources or Generators.** The Director may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that it cannot feasibly achieve its power needs with batteries, natural gas powered generators, fuel cells, solar or other similarly non-polluting, low noise-level means.
 - (7) **Lights.** Unless otherwise required pursuant to FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The Director may, in his or her discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.
 - (8) **Noise.** A wireless facility and all equipment associated with a wireless facility must not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located.
 - (9) **Parking.** A wireless facility may not cause any net loss in parking.
 - (10) **Signage.** No signs, banners, flags or any other advertising media may be affixed to a wireless facility unless required for compliance with applicable federal, state or City permit regulation or permit condition. Small site identification and radio frequency signage are permitted.
- (D) **Freestanding Wireless Facilities.** In addition to the generally applicable standards and guidelines provided in subsection (C), all proposed freestanding wireless facilities or modifications to freestanding wireless facilities must conform to the standards and guidelines in this subsection (D).
- (1) **Tower-mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
 - (2) **Ground-mounted Equipment.** Applicants must conceal ground-mounted equipment within opaque fences or other opaque enclosures. The Director may require, as a condition of approval, design and/or landscape features in addition to other

concealment when necessary to blend the equipment or enclosure into the surrounding environment.

- (3) **New Faux-trees.** The Director may approve a new freestanding wireless facility camouflaged as a faux-tree only when it blends with mature natural trees in proximity to the proposed wireless facility. The Director may require the applicant to plant new trees to adequately conceal the proposed faux-tree wireless facility.
- (E) **Building-Mounted Wireless Facilities.** In addition to the generally applicable standards and guidelines provided in subsection (C), all proposed building-mounted wireless facilities or modifications to building-mounted wireless facilities must conform to the standards and guidelines in this subsection (E).
- (1) **Facade-mounted Equipment.** Applicants must conceal all facade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The Director may not approve any “pop-out” screen boxes unless such design is architecturally consistent with the original support structure. The Director may not approve any exposed facade-mounted antennas, which includes exposed antennas painted to match the facade.
 - (2) **Rooftop-mounted Equipment.** All equipment mounted on rooftops must be screened from public view with concealment that matches the underlying structure in proportion, quality, architectural style and finish. The Director may approve unscreened rooftop equipment only when it expressly includes a condition of approval that such equipment is effectively concealed due to its low height and setback from the roofline.
 - (3) **Ground-mounted Equipment.** Outdoor ground-mounted equipment associated with building-mounted wireless facilities must be avoided whenever feasible. In locations visible or accessible to the public, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).
- (F) **Wireless Facilities in the Public Rights-of-Way.** In addition to the generally applicable standards and guidelines provided in subsections (A)-(D) above, all proposed wireless facilities in the rights-of-way or modifications to such wireless facilities must conform to the standards and guidelines in this subsection (F).
- (1) **Locational Criteria.** For the purpose of this chapter, a location in the public right-of-way will be deemed to be the same rank order as the nearest district that abuts that location and subject to the height limitation for that nearest abutting district. In addition to the locational preferences set out in section 17.780.090(A) above, the City prefers wireless facilities placed on the rights-of-way structures listed below. The list orders locations from most preferred to least preferred.
 - (a) existing City-owned structures
 - (b) other existing structures

- (c) new structures
- (2) **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground to the greatest extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.
- (3) **Ground-mounted Equipment.** Applicants must install ground-mounted equipment that cannot be placed underground in a location that does not unreasonably obstruct pedestrian or vehicular traffic.
- (4) **Pole-mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. Antennas must be screened within a radome or other similar concealment technique. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be placed within the pole when possible or otherwise concealed from public view to the extent feasible.
- (5) **Non-reflective Finishes.** All above-ground or pole-mounted equipment in the rights-of-way must not be finished with reflective materials unless approved by the Director of Public Works.

Section 17.780.100 – STANDARD CONDITIONS OF APPROVAL

All applications for a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit shall be subject to the standard conditions of approval provided in this section. The Planning Commission or Director may add, remove or modify any conditions of approval as necessary or appropriate to protect and promote the public health, safety and welfare.

- (A) **Permit Duration.** The permit will automatically expire 10 years from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.
- (B) **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.
- (C) **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.
- (D) **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 within one (1) business day of permittee's receipt of the Director's written request.

- (E) **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.
- (F) **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.
- (G) **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.
- (H) **Graffiti Abatement.** Permittee shall remove any graffiti on the wireless facility at permittee sole expense subject to the provisions of Chapter 9.90.

Section 17.780.110 – 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) **Conditional Wireless Facilities Permits.** Any person or entity may appeal a final decision by the Planning Commission in accordance with Code chapter 17.880. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Planning Commission solely on the specific issues raised by the appellant(s). The City Council shall review the decision of the Planning Commission *de novo*.
- (C) **Administrative Wireless Facilities Permits.** Any person or entity may appeal a final decision by the Director in accordance with Code chapter 17.880. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The Planning Commission shall review the decision of the Director solely on the specific issues raised by the appellant(s). The Planning Commission shall review the decision of the Director *de novo*.

Section 17.780.120 – PERMIT RENEWAL

Any application to renew a permit granted under this chapter must be tendered to the City between 365 days and 180 days prior to the expiration of the current permit, and shall be accompanied by all required application materials, fees and deposits for a new application as then in effect. The City shall review an application for permit renewal in accordance with the standards for new facilities then as then in effect. The Director may, but is not obligated to, grant a written temporary extension on the permit term to allow sufficient time to review a timely submitted permit renewal application.

Section 17.780.130 – PERMIT REVOCATION

- (A) **Grounds for Revocation.** A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or law provision applicable to the facility.
- (B) **Revocation Procedures.**
 - (1) When the Director finds reason to believe that grounds for permit revocation exist, the Director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice to cure the noncompliance or show that no noncompliance ever occurred.

- (2) If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the City Council shall conduct a noticed public hearing to determine whether to revoke the permit for the uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the City Council. After the noticed public hearing, the City Council may revoke or suspend the permit when it finds that the permittee had notice of the noncompliance and a reasonable opportunity to cure the noncompliance, but failed to comply with any enforceable permit, permit condition or law applicable to the facility. Written notice of the City Council's determination and the reasons therefor shall be dispatched by Certified U.S. Mail, Return Receipt Requested, to the permittee's last known address. Upon revocation, the City Council may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

Section 17.780.140 – DECOMMISSIONED OR ABANDONED WIRELESS FACILITIES

- (A) **Decommissioned Wireless Facilities.** Any permittee that intends to decommission a wireless facility must send 30-days' prior written notice by United States Certified Mail to the Director. The permit will automatically expire 30 days after the Director receives such notice of intent to decommission, unless the permittee rescinds its notice within the 30-day period.
- (B) **Procedures for Abandoned Facilities.**
 - (1) To promote the public health, safety and welfare, the Director may declare a facility abandoned when:
 - (a) The permittee notifies the Director that it abandoned the use of a facility for a continuous period of 90 days; or
 - (b) The permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Director that states the basis for the Director's belief that the facility has been abandoned for a continuous period of 90 days; or
 - (c) The permit expires and the permittee has failed to file a timely application for renewal.
 - (2) After the Director declares a facility abandoned, the permittee shall have 90 days from the date of the declaration (or longer time as the Director may approve in writing as reasonably necessary) to:
 - (a) reactivate the use of the abandoned facility subject to the provisions of this chapter and all conditions of approval;
 - (b) transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned facility; or

- (c) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.
- (3) If the permittee fails to act as required in section 17.780.140(B)(2) within the prescribed time period, the City Council may deem the facility abandoned and revoke the underlying permit(s) at a noticed public meeting in the same manner as provided in section 17.780.130(B)(2). Further, the City Council may take any legally permissible action or combination of actions reasonably necessary to protect the public health, safety and welfare from the abandoned wireless facility.

Section 17.780.150 – WIRELESS FACILITIES REMOVAL OR RELOCATION

- (A) **Removal by Permittee.** The permittee or property owner must completely remove the wireless facility and all related improvements within 90 days after the (1) the permit expires, (2) the City Council properly revokes a permit pursuant to Section 17.780.130(B), (3) the permittee decommissions the wireless facility, or (4) the City Council properly deems the wireless facility abandoned pursuant to 17.780.140(B). In addition and within the 90-day period, the permittee or property owner must restore the former wireless facility site area to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
- (B) **Removal by City.** The City may, but is not obligated to, remove an abandoned wireless facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed wireless facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate in its sole discretion. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. A lien may be placed on all abandoned personal property and the real property on which the abandoned wireless facility is located for all costs incurred in connection with any removal, repair, restoration and storage performed by the City. The City Clerk shall cause such a lien to be recorded with the County of Contra Costa Clerk-Recorder's Office.
- (C) **Relocation Procedures for Facilities in the Rights-of-Way.** After reasonable written notice to the permittee, the Director of Public Works may require a permittee, at the permittee's sole expense and in accordance with the standards in this chapter applicable to such wireless facility, to relocate or reconfigure a wireless facility in the public rights-of-way as the Director of Public Works deems necessary to maintain or reconfigure the rights-of-way for other public projects or take any actions necessary to protect public

health, safety and welfare. The provisions in this section are intended to include circumstances in which a wireless facility is installed on a pole scheduled for undergrounding.

Section 17.780.160 – LIMITED EXEMPTIONS; VARIANCES

- (A) **Limited Exemption for Personal Wireless Service Facilities.** The City Council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The City Council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. The City Council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the City’s legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the Planning Commission may grant a limited, one-time exemption from strict compliance subject to the provisions in this section 17.780.160(A).
- (1) **Required Findings.** The Planning Commission shall not grant any exemption unless the applicant demonstrates with clear and convincing evidence all the following:
- (a) The proposed wireless facility qualifies as a “personal wireless services facility” as defined in United States Code, Title 47, section 332(c)(7)(C)(ii);
 - (b) The applicant has provided the City with a clearly defined technical service objective and a clearly defined potential site search area;
 - (c) The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and
 - (d) The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviation is the least noncompliant location and design necessary to reasonably achieve the applicant’s reasonable technical service objectives.
- (2) **Scope of Exemption.** The Planning Commission shall limit its exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The Planning Commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

- (B) **Variations.** All other requests to relax or waive any provision under this chapter for any non-personal wireless services facility are subject to the variance procedures under Code chapter 17.860.

Section 17.780.170 – 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.** The Director may request 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 such review 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 17.780.180 – 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 17.780.190 – 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 17.780.200 – 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.