

Ordinance No. 2011- \_\_\_\_\_

Exhibit A

17.12.050 – Antennas/Wireless communication facilities.

- A. **Purpose and Intent.** The purpose of this section is to control the installation of antennas and related wireless communication facilities. It is the city's intent to encourage new and more efficient technology in enhancing telecommunications within the city. It is recognized that unrestricted installations are contrary to the city's efforts to stabilize economic and social aspects of neighborhood environments, and to promote safety and aesthetic considerations, family environments and a basic residential character within the city. It is the intent of this section to permit wireless communication facilities where they can be installed without creating an adverse economic, safety and aesthetic impact on nearby properties and the overall community.
- B. **Applicability.** This section applies to all proposed antennas and modifications and related wireless communication facilities, as follows:
1. All facilities for which applications were received by the department but not approved prior to the effective date of the ordinance codifying this section, shall comply with the regulations and guidelines of this section;
  2. All facilities for which applications were approved by the city on or prior to the effective date of the ordinance codifying this section shall be exempt from this section, except for the requirements of subsections C.5, C.6, C.7 and D.7;
  3. All facilities which have been previously approved, but are now or hereafter modified, expanded, reduced, or for which the permit or approval is now or hereafter subject to renewal, shall comply with this section.
- C. **Standards for wireless communication facilities not located within a public right-of-way.** All wireless communication facilities not located within a public right-of-way shall comply with the following requirements:

1. **Permit Requirements.** No wireless communication facility shall be installed or materially modified until the applicant or operator has obtained: (i) approval from the commission; (ii) a building permit; and (iii) any other permits required by an ordinance of the city. All wireless communication facilities shall require commission approval of a conditional use permit prior to issuance of a building permit.
2. **Application Content.** Applications for the approval of wireless communication facilities shall include, but is not necessarily limited to, an application fee and the following information, in addition to all other information required by the city for a conditional use permit application pursuant to chapter 17.60 of this title:
  - a. Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of subsection 3 of this paragraph C; and
  - b. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this section;
  - c. A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably

**Comment [A1]:** We would like the most stringent criteria as related by State and Federal Law

anticipated for construction within three years of submittal of the application. Applicants may not file, and the city shall not accept, applications that are not consistent with the master plan for a period of three years from approval of a conditional use permit unless the applicant can demonstrate materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless communication facilities site not shown on a master plan submitted to the city within the prior three years.

- d. A siting analysis which identifies all other feasible locations within or without the city which could serve the area intended to be served by the facility. If there are more than five feasible sites, then analysis of only the five most feasible locations need be provided.
  - e. A statement that the operator will comply with all applicable radio frequency emission requirements at all times the facility is operating.
  - f. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application.
  - g. Acoustical information for non-generating equipment, such as air conditioning units and back-up generators.
  - h. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940.
3. Location Requirements. To minimize aesthetic and visual impacts on the community, wireless communication facilities shall be located according to the following standards to the extent feasible:
- a. General Requirements.
    - i. All equipment shall be undergrounded to the maximum extent feasible; any equipment that is not undergrounded shall be screened from adjacent uses to the maximum extent feasible.
    - ii. Ground-mounted facilities shall be located only in proximity to existing utility poles (which are not scheduled for eventual undergrounding), light poles, other structures or trees of comparable height. All requested placements must be consistent with the locations presented in the master plan, except as set forth in subsection (C)(2)(c) of this section.
    - iii. A freestanding telecommunications tower shall be set back a distance of at least 150% of the height of the tower from the property line of any residentially zoned or occupied lot.
    - iv. Wireless facilities shall be set back at least 1500 feet from schools, dwelling units and parks, as measured from the closest point of the wireless facility (including equipment) to the applicable property line.
  - b. Restricted Locations. Wireless communication facilities located in any of the following locations must be designed as a camouflage facility:
    - i. Within any nonresidential zone on a site that contains a legally established residential use;

**Comment [A2]:** Peer reviewer should recommend distance which is legally enforceable on new wireless facility on existing facilities – modifications ok

Need language to separate out new applications from existing sites

**Comment [A3]:** Existing sites are addressed as preferred locations in 17.12.050(C)(3) (d)(i) below. If further language addressing existing sites is desirable, a clearer statement of the CTC's goal would be helpful.

- ii. Within the Old Town overlay zone;
  - iii. On any property that is designated historic by the city council; and,
  - iv. Within the area subject to the Calabasas Park Centre Master Plan;
  - v. Within a scenic corridor designated by the city.
  - vi. Within a historic district designated by the city.
- c. Prohibited Locations. No wireless communication facility shall be established on any ridgeline or within any residential zoning district described in subparagraphs (i) and (ii) herein. Notwithstanding the foregoing, wireless communication facilities may be established in these locations if the applicant obtains a conditional use permit from the commission and provides sufficient technical proof that the proposed location is necessary to close a significant gap in the operator's coverage and that there are no less intrusive alternative means to close that significant gap.
- i. Ridgelines. No wireless communication facility shall be placed on or near a ridgeline so that it appears silhouetted against the sky when viewed from Las Virgenes Road, Lost Hills, Parkway Calabasas, Mulholland Highway, Old Topanga Canyon Road or the Ventura Freeway.
  - ii. Residential Zones. No facility shall be located within a residential zone, including areas set aside for open space, parks or playgrounds.
- d. Guidelines for Placement on Structures. Antennas shall be mounted on structures utilizing the methods described below. If an antenna cannot be mounted as set forth in subsection (i), it may be mounted in accordance with subsection (ii). If an antenna cannot be mounted as set forth in either subsection (i) or (ii), it may be mounted in accordance with subsection (iii):
- i. A camouflage facility mounted on an existing structure or co-located on an existing tower;
  - ii. A camouflage facility mounted on an existing steel or concrete pole, including a light standard; or
  - iii. A camouflage facility mounted on a new steel, wood or concrete pole.
- e. Preferred Zones and Locations. When doing so would not conflict with one of the standards set forth in this subsection (3) or with federal law, facilities shall be located in the most appropriate location as described in this subsection (e). The following areas of the city range from the most appropriate to the least appropriate for wireless communication facilities:
- i. co-location on an existing facility in a non-residential zone;
  - ii. location on an existing structure or utility pole in a non-residential zone;
  - iii. location on a new structure in a non-residential zone;
  - iv. co-location on an existing facility in a residential zone;
  - v. location on an existing structure or utility pole in a residential zone;
  - vi. location on a new structure in a residential zone.

**Comment [A4]:** This is intended to protect the City from a claim that its ordinance necessarily will prevent an applicant from closing a significant gap in coverage. I defer to Mr. Campanelli whether there are other means to do so that would be preferable.

**Comment [A5]:** Please review conflict in stated intent of this language and council direction of May 25<sup>th</sup>. Is this a loophole?

**Comment [A6]:** Further definition of camouflage is needed

**Comment [A7]:** This term is defined in section 17.90.020(C) of the City Code.

**Comment [A8]:** Would the term commercial be better than non-residential here?

**Comment [A9]:** This is a policy question, but must also be considered in light of the need to protect the ordinance from a claim that it necessarily bars carriers from closing significant gaps in coverage. All the City zones are listed in Table 2.01 in Section 17.10.020 of the City Code. The types of zones are residential, commercial and special purpose. Special purpose districts include Planned Development, Hillside / Mountainous, (both of which allow residential development), Open Space, Open Space – Development Restricted, Public Facility and Recreation.

No new facility may be placed in a less appropriate area unless the applicant demonstrates to the satisfaction of the commission that no more appropriate location can feasibly serve the area the facility is intended to serve provided, however, that the commission may authorize a facility to be established in a less-appropriate location if doing so is necessary to prevent substantial aesthetic impacts.

4. Design and Development Standards. Wireless communication facilities shall be designed and maintained as follows:
  - a. Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures. The height of the facility shall also be consistent with surrounding structures.
  - b. Building-mounted facilities shall be designed and constructed to be fully screened in a manner that is compatible in color, texture and type of material with the architecture of the building on which the facility is mounted.
  - c. Ground-mounted facilities shall be designed and constructed to be fully screened, to the maximum extent possible, through the use of landscaping as approved by the commission.
  - d. The facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or expressly permitted by the city.
  - e. All accessory equipment associated with the operation of a wireless communication facility shall be located within a building, enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.
  - f. No wireless telecommunications facility shall emit noise louder than **fifty (50)** decibels (dB) as measured from the base of the **facility**.
5. Validation of Proper Operation. Prior to unattended operations, an applicant for approvals with respect to any wireless communication facility site that is not "categorically excluded" as that term is defined in FCC Office of Engineering and Technology Bulletin 65 ("FCC OET Bulletin 65"), as it may be amended from time to time, shall allow the director to obtain a detailed technical report prepared by a qualified engineer verifying that the operation of the facility is in conformance with the uncontrolled/general population RF exposure standards established by FCC OET Bulletin 65. The applicant shall reimburse the city for its actual costs of that testing.
6. Monitoring Requirements. The owner or operator of every approved wireless communication facility shall allow the director to obtain a detailed technical report prepared by a qualified engineer verifying that the facility is in conformance with the uncontrolled/general population RF exposure standards established by FCC OET Bulletin 65 and in conformance with relevant building requirements. **The** applicant owner or operator shall reimburse the city for its actual costs of that testing to the extent those costs are not recovered by any regulatory fee imposed by the city.
7. Abandonment.
  - a. Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant, the operator or the property owner no later than ninety (90) days after the discontinuation of use. Disuse for more than ninety (90) days shall

**Comment [A10]:** Ask peer reviewer to opine on whether 50 dB is acceptable.

\*\*The 50dB noise level is based on section 17.20.160 of the CMC, which establishes 50 dB as the permitted noise level within the residential zoning district.

**Comment [A11]:** Possibly add language?? Not withstanding the forgoing, the applicant shall submit a sound study.

**Comment [A12]:** This is addressed in 17.12.050(C)(2)(g) above. I defer to Mr. Campanelli as to whether additional language is needed on this issue.

**Comment [A13]:** ANSI standard?

**Comment [A14]:** Whether to identify additional applicable standards is a policy question.

constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.

- b. Written notice of a determination of abandonment shall be sent to the operator of the wireless communication facility. The operator shall have ninety (90) days to remove the facility or provide the director with evidence that the use has not been discontinued.
  - c. All facilities not removed within the required ninety-day period shall be in violation of this code and the applicant, operator, and property owner shall be subject to subsection (C)(8) of this section. If the city is required to remove a disused facility, the applicant, operator, and property owner shall be jointly and severally liable to pay all costs and expenses the city incurs in relation to the removal of the facilities, including legal fees and costs.
  - d. The operator of a facility shall notify the city, in writing, of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon abandonment, the site shall be restored to its original condition at the expense of the applicant, operator or property owner.
8. Violations. The city may terminate a conditional use permit for any wireless communication facility in violation of this section in accordance with Section 17.80.070 of this code. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
9. Findings. No proposed wireless communication facility to be located outside a public right-of way may be approved unless the commission finds as follows, in addition to the findings required by section 17.62.060 of this code:
- a. The applicant has demonstrated by clear and convincing evidence that the facility is necessary to close a significant gap in the operator's service coverage. Such evidence shall include signal testing of existing facilities. A driving signal test may only be used to evidence a significant gap in service to outdoor service users. Signal testing to demonstrate a need for a facility to serve users in structures must be based on signal testing within structures.
  - b. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's service coverage which alternative site is a more appropriate location for the facility under the standards of subsection 3(e) of this section.
10. Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit, or any shorter period permitted by Government Code section 65964(b), any wireless communication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the City and at the applicant's or operator's own expense, remove that facility.

**D. Standards for Wireless Communication Facilities Located Within Public Rights-of-Way.** All wireless communication facilities located within public rights-of-way shall comply with the following requirements to the fullest extent permitted by state and federal law:

- 1. Applicability. This subsection shall apply to new wireless communications facilities as well as to any modifications to existing wireless communication facilities located within public rights-of-way.

**Comment [A15]:** Commission comments on public section should apply to private section as well.

WHOLE SECTION: To the extent this language isn't in private sector, it should be included/changed.

**Comment [A16]:** California law gives the City considerably less power to regulate facilities in rights of way than it has with respect to sites on private property. The idea is that the telephone (not data) carriers already own rights akin to an easement to use public rights of way under PUC 7901. Accordingly, the City's role is to regulate the use of that "easement" so as to protect aesthetics, the environmental and other uses of the public right of way. Accordingly, I continue to recommend that these sections be separate. If there are particular comments on these sections that can be reconciled with the rights of telephone carriers under PUC 7901, I will be happy to provide further advice on this point.

2. Permit Requirements: A request to construct or modify a wireless telecommunication facility within a public right-of-way shall require all of the following: (i) a zoning clearance from the commission, (ii) an encroachment permit from the public works department, and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or an oak tree permit. All new facilities and substantial modifications to existing facilities shall be first reviewed by the development review committee. All zoning clearance applications will be scheduled for public hearing before the commission in accordance with chapter 17.78 of this code. The commission shall determine if a proposed project is the least intrusive means to close a significant gap in the applicant's service coverage.
3. Application Content. To permit the city to approve or disapprove the siting of wireless communication facilities based on substantial evidence in the administrative record as required by federal law, applications for the approval of wireless communication facilities shall include the following information, in addition to all other information required by the city for a zoning clearance:
  - a. Written documentation demonstrating a good faith effort to locate the facility in accordance with the location requirements in subsection (D)(5) of this section.
  - b. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing visual impacts of the proposed facility and its compliance with the provisions of this section.
  - c. A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within three years of submittal of the application. Applicants may not file, and the city shall not accept, applications that are not consistent with the master plan for a period of three years from approval of a zoning clearance unless the applicant can demonstrate materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless communication facility site not shown on a master plan submitted to the city within the prior three years.
  - d. A siting analysis which identifies all other feasible locations within or without the city which could serve the area intended to be served by the facility. If there are more than five feasible sites, then analysis of only the five most feasible locations need be provided.
  - e. A statement that the operator will comply with all applicable radio frequency emission requirements at all times the facility is operating.
  - f. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application.
  - g. Acoustical information for noise-generating equipment, such as air conditioning units and back-up generators.
  - h. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940.
4. Guidelines. All wireless communication facilities located within a public right-of-way shall be designed as follows:

**Comment [A17]:** This is a policy question. I had understood the Council to direct the division of labor between the PC and CTC reflected in this draft. If the Council wishes a different division of labor, we can draft accordingly.

**Comment [A18]:** Make sure this language is in private part of application as well

**Comment [A19]:** The language here should be consistent in both public/private sections

**Comment [A20]:** It is. See 17.20.050 (C)(2)(e).

**Comment [A21]:** The language here should be consistent in both public/private sections

**Comment [A22]:** It is. See 17.20.050(C)(2)(g).

the surrounding area as approved by the commission.

- b. Ground-mounted equipment shall be screened, to the fullest extent possible, through the use of landscaping, walls, or other decorative feature, as approved by the commission.
- c. Facilities located within a designated scenic corridor shall be camouflage facilities, with all equipment, excluding required electrical meter cabinets, located underground or pole-mounted. Required electrical meter cabinets shall be screened as approved by the commission.
- d. Pole-mounted equipment shall not exceed six cubic feet.
- e. Antennas shall be pole-mounted using the methods described below.
  - i. If an antenna cannot be mounted as set forth in subsection (1), it may be mounted in accordance with subsection (2). If an antenna cannot be mounted as set forth in either subsection (1) or (2), it may be mounted in accordance with subsection (3):
    - (1) A camouflage facility mounted on an existing, co-located tower;
    - (2) A camouflage facility mounted on an existing steel or concrete pole, including a light standard; or
    - (3) A camouflage facility mounted on a new steel, wood or concrete pole but only if an operator shows that it cannot otherwise close a significant gap in its service coverage, and that the proposal is the least intrusive means of doing so.
  - ii. All installations shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of an additional antenna installation on a pole with existing antennae.
  - iii. The maximum height of any antenna shall not exceed twenty-four (24) inches above the height of a pole or tower other than a streetlight pole, nor sixteen (16) feet above the height of a streetlight pole, nor shall any portion of the antenna or equipment mounted on a pole be less than sixteen (16) feet above any drivable road surface. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95 as it now exists or may hereafter be amended.
  - iv. A freestanding telecommunications tower shall be set back a distance of at least 150% of the height of the tower to the property line of any residentially zoned or occupied lot.
- f. Wireless communication facilities not located within a scenic corridor or historic district designated by the city shall be designed to place all equipment underground, excluding required electrical meters. However, if such facilities cannot be placed underground, ground-mounted equipment may be installed up to a height of five feet and to a footprint of fifteen (15) square feet.
- g. Equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic, (ii) inconvenience to the public's use of a public right-of-way, or (iii) safety hazards to pedestrians and motorists. In no

**Comment [A23]:** Make sure camouflage is defined

**Comment [A24]:** See Calabasas Municipal Code section 17.90.020(C).

**Comment [A25]:** What clarification is needed?

**Comment [A26]:** Clarify as applicable

**Comment [A27]:** Define high wind loads

**Comment [A28]:** "Wind load" has a precise meaning; "high" does not. I agree that clarification of what constitutes a "high" wind load would be helpful, but this requires input from those with technical knowledge that I lack.

case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.

- h. Facilities shall not be located within five hundred (500) feet of another wireless facility on the same side of a street.
- i. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.
- j. Facilities shall be set back at least 1500 feet from schools, homes and parks as measured from the closest point of the wireless facility (including equipment) to the applicable property line unless maintaining such a setback would prevent the applicant from closing a significant gap in its service coverage and the proposed location is the least intrusive means of doing so.

**Comment [A29]:** Peer reviewer should recommend distance which is legally enforceable on new wireless facility on existing facilities – modifications ok  
Need language to separate out new from existing  
**Comment [A30]:** See comment number mgc3 above

5. Preferred Zones and locations. When doing so would not conflict with the standards set forth in this subsection D, or with state or federal law, facilities shall be located in the most appropriate location as described in this subsection (5). The following areas of the city range from the most appropriate to the least appropriate for wireless communication facilities:

- a. co-location on an existing facility in a non-residential zone ;
- b. location on an existing structure or utility pole in a non-residential zone;
- c. location on a new structure in a non-residential zone;
- d. co-location on an existing facility in a residential zone;
- e. location on an existing structure or utility pole in a residential zone;
- f. location on a new structure in a residential zone.

**Comment [A31]:** Should the term commercial be used here rather than non-residential?  
**Comment [A32]:** See comment number mgc9 above.

No new facility may be placed in a less appropriate location unless the applicant demonstrates to the satisfaction of the commission that no more appropriate location can feasibly serve the area the facility is intended to serve provided, however, that the commission may authorize a facility to be established in a less appropriate location if doing so is necessary to prevent substantial aesthetic impacts.

6. Findings. No proposed wireless communication facility within a public right-of way may be approved unless the following findings are made:

- a. The applicant has demonstrated by clear and convincing evidence that the facility is necessary to close a significant gap in the operator's service coverage. Such evidence shall include signal testing of existing facilities. A driving signal test may only be used to evidence a significant gap in serve to outdoor service users. Signal testing to demonstrate a need for a facility to serve users in structures must be based on signal testing within structures.
- b. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's service coverage which alternative site is a more appropriate location for the facility under the standards of paragraph 5 of this subsection.
- c. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
- d. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

e. The facility satisfies the location requirements of paragraph (5) of this subsection.

7. Conditions of Approval: In addition to compliance with the guidelines outlined in paragraph 4 of this subsection, all facilities shall be subject to the following conditions:

a. Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the city.

b. Validation of Proper Operation: Prior to unattended operations, the applicant for approvals with respect to any wireless communication facility site that is not "categorically excluded" as that term is defined in FCC Office of Engineering and Technology Bulletin 65 ("FCC OET Bulletin 65"), as amended from time to time, shall allow the commission to obtain a detailed technical report prepared by a qualified engineer verifying that the operation of the facility is in conformance with the uncontrolled/general population RF exposure standards established by FCC OET Bulletin 65. The applicant shall reimburse the city for its actual costs to conduct that testing to the extent that a wireless carrier has a report on the facility, all reports done on facilities shall be provided to the City.

c. Abandonment.

1) Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant or the operator no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.

2) The director shall send a written notice of the determination of abandonment to the operator of the wireless communication facility. The operator shall have ninety (90) days to remove the facility or to provide the director with evidence that the use has not been discontinued.

3) The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completing of abandonment, the site shall be restored to its original condition at the expense of the applicant or operator.

4) All facilities not removed within the required ninety-day period shall be in violation of this code. In the event the city removes a disused facility upon the failure of the applicant and owner to timely do so, the applicant and operator shall be jointly and severally liable for the payment of all costs and expenses the city incurs in relation to the removal of the facilities, including legal fees and costs.

d. The applicant and operator of a facility shall defend, indemnify and hold the city and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and/or approval of the design, construction, operation or maintenance of the facility and/or arising out of or connected with any work done in, or use of, a public right-of-way by an applicant or operator.

e. If, at any time after ten (10) years of the issuance of an encroachment permit, or any shorter period permitted by Government Code Section 65964(b), any wireless communication facility or any portion thereof within a public right-of-way becomes incompatible with public health, safety or welfare or the public's use of

**Comment [A34]:** This could be renumbered if there is a desire to do so, but it should be made clear that the City's legal power to impose these abandonment requirements comes from its power to conditionally approve applications. That is to say, if the conditions of approval of a facility do not impose these abandonment obligations, the City will likely lack the power to impose them subsequently.

**Comment [A33]:** Check numbering here - Does this belong under Conditions of Approval or need to be renumbered to be #8

the public right-of-way, the applicant or operator of the facility shall, upon notice from the City and at its own expense, remove any such facilities.

- f. Wireless communication facilities shall not be located within any portion of a public right-of-way so as to interfere with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other public facilities.
- g. Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the public works director to: (i) protect the public health, safety, and welfare; (ii) prevent interference with pedestrian and vehicular traffic; or (iii) prevent damage to a public right-of-way or any property adjacent to it. Before the director of public works imposes conditions, changes, or limitations pursuant to this paragraph (f), he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.
- h. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless communication facility.
- i. The applicant or operator of the wireless communication facility shall not move, alter, temporarily relocate, change, or interfere with any existing facility without the prior written consent of the owner of that facility. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless communication facility unless: (i) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses, and (ii) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any wireless communication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any wireless communication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.
- j. Should any utility company offer electrical service that does not require the use of a meter cabinet, the applicant or operator of the facility agrees at its cost to remove the meter cabinet and any foundation thereof and restore the area to its prior condition.
- k. On each annual anniversary of the effective date of any permit authorizing a wireless telecommunications facility, the applicant or operator shall pay a fee to reimburse the city's costs to confirm whether the wireless communications facility complies with applicable law. If the city adopts a regulatory fee to fund such compliance reviews, any fee paid under this condition shall be credited against that fee.
- l. The wireless telecommunications facility may operate only until the tenth anniversary of the date the wireless telecommunications facility is first placed into service, unless the date of service is further extended by additional term(s) not to exceed ten years. There is no limit to the number of times that a proposed facility may obtain extensions.

**Comment [A35]:** Whether and how to apply ANSI standards is a policy question. On another point re this language, AT&T's representative claimed at a recent Council meeting that FCC regulations preempt a requirement of annual compliance inspections. We disagree with that claim where the conditions of approval of a site impose this requirement. We are still considering the City's power to impose an annual inspection regime other than via conditions of approval.

**Comment [A36]:** Assure comments on public section are applied here ANSI

**Comment [A37]:** I agree that it can be helpfully clarified. The intent seems to be that an application for an extension is required. It will also be useful to clarify the standard the City is to apply in considering such applications, identify who will make the decision and whether an appeal is available.

**Comment [A38]:** Is 10 year extension automatic or does wireless carrier have to make a showing.

8. Construction. These standards are intended to exert the maximum authority available to the city in the regulation of wireless communications facilities under applicable state and federal law but not to exceed that authority. Accordingly, this section shall be construed and applied in light of any such limits on the city's authority.

**Comment [A39]:** This language is intended to protect the ordinance from a claim that it exceeds the City's power. I do not recommend that it be deleted.

9. Violations. The city may terminate a conditional use permit for any wireless communication facility in violation of this section in accordance with Section 17.80.070 of this code. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

**Comment [A40]:** Does this need to be here? Or REMOVE.

10. Noise. No wireless telecommunications facility shall emit noise louder than fifty (50) decibels (dB) as measured from the base of the facility.

**Comment [A41]:** Ask peer reviewer to opine on whether 50 dB is acceptable.

E. Standards for Satellite Antennas. Satellite antennas, including portable units and dish antennas, shall be designed, installed and maintained in compliance with the regulations of the Federal Communications Commission. Satellite antennas with diameters larger than one meter in residential zones and two meters in non-residential zones shall also comply with the following requirements provided these provisions do not conflict with applicable state and federal regulations.

\*\*The 50dB noise level is based on section 17.20.160 of the CMC, which establishes 50 dB as the permitted noise level within the residential zoning district.

1. Permit Requirement. Zoning clearance shall be required for satellite antennas with diameters of one meter or less; administrative plan review approval shall be required for antennas larger than one meter. Conditional use permits shall be required for antennas larger than one meter located within a designated scenic corridor.

**Comment [A42]:** To the extent this language can be strengthened to stealth dishes- strengthen it.

2. Application - Plans. Plans for satellite antennas shall be submitted with applications for a building permit, and shall include a site plan and elevation drawings indicating the height, diameter, color, setbacks, foundation details, landscaping, and method of screening. The plans shall be subject to approval of the director.

**Comment [A43]:** The City's power to require stealthing of dishes is pretty limited, but I defer to Mr. Campanelli as to any strategies he may have to recommend. Setbacks and screening requirements are permitted and that is the strategy the City has employed.

3. Location. No satellite antenna shall be located within any required front- or street-side-yard setbacks in any zone. In addition, no portion of a satellite antenna shall extend beyond a property line.

4. Color. A satellite antenna and its supporting structure shall be painted a single, neutral, non-glossy color; such as an earth tone, gray, or black; and, to the extent possible, be compatible with the appearance and character of the surrounding neighborhood.

5. Wiring. All wiring shall be placed underground whenever possible.

6. Residential Zones. In any residential zone, satellite antennas shall be subject to the following standards:

a. Only ground-mounted satellite antennas shall be permitted. Ground-mounted antennas shall be located in the rear yard of any property to the extent technically possible;

b. Satellite antennas shall not exceed fifteen (15) feet in height;

c. Only one satellite antenna may be permitted on any single-family residential site. Only one antenna shall be permitted per dwelling unit on any multiple family residential site;

d. A satellite antenna shall be separated from adjacent properties by at least a six-foot-high solid wall or fence or by trees or other plants of equal minimum height;

- e. Any satellite antenna that is taller than an adjacent property-line fence shall be located away from the side or rear property line a distance equal to or greater than the height of the antenna;
  - f. The diameter of a satellite antenna shall not exceed two meters. This provision may be modified by the director if the applicant provides a sufficient technical study prepared by a qualified engineer demonstrating to the director's satisfaction that strict compliance would result in no satellite reception; and,
  - g. A satellite antenna shall be used for private, noncommercial purposes only.
7. Nonresidential Zones. In any nonresidential zone, satellite antennas may be roof- or ground-mounted and shall be subject to the following standards:
- a. If roof-mounted, satellite antennas shall be screened from ground view by a parapet or other screening approved by the city. The minimum height and design of a parapet, wall, or other screening shall be subject to the approval of the director;
  - b. If ground-mounted, satellite antennas shall not be located between a structure and an adjacent street and shall be screened from public view and neighboring properties;
  - c. The location and height of satellite antennas shall comply with all requirements of the underlying zone; and
  - d. If the subject site abuts a residential zone, all antennas shall be set back a minimum distance from the property line equal to the height of the antenna, unless screened from view.
- F. **Standards for Amateur Radio Antennas.** All amateur radio antennas shall be designed, constructed and maintained as follows:
- 1. The maximum height shall not exceed forty (40) feet, measured from finished grade;
  - 2. Any boom or other active element or accessory structure shall not exceed twenty-five (25) feet in length;
  - 3. Antennas may be roof- or ground-mounted; and
  - 4. Antennas may not be located in any front- or side-yard setbacks;
  - 5. These standards in this subsection F are subject to modification or waiver by the director on a case-by-case basis where required for the city to comply with FCC PRB-1 and California Government Code 65850.3 and where such modification or waiver is based on sufficient technical information provided in writing by the applicant at the request of the city.
- G. **Effects of Development on Antenna Reception.** The city shall not be liable if development within the city after installation of an antenna impairs antenna reception, transmission, utility, or function to any degree.
- H. **Communications and Technology Commission as Planning Commission for Specified Purposes.** For purposes of approvals required by this section 17.12.050 and any other entitlement under this code

required only because the application seeks to construct or operate a wireless communications facility (including, but not limited to, a scenic corridor permit, a variance, or an oak tree permit), "commission" means the Communications and Technology Commission created pursuant to chapter 2.38 of this code, which is hereby constituted as a planning commission of the city for that purpose pursuant to Government Code section 65100. As to any application that seeks approvals for both (i) new structures, or uses of existing structures or of land other than construction and operation of a wireless communications facility and (ii) for the construction and operation of a wireless communications facility, the Communications and Technology Commission shall be the "commission" for purposes of approvals required only because the application seeks to construct and operate a wireless communications facility and the Planning Commission created pursuant to chapter 2.28 of this code shall be the "commission" for all other entitlements sought by the application. In addition, the Communications and Technology Commission shall be the "commission" for purposes of review of proposed amendments to this section 17.12.050.

- I. **Private enforcement.** In addition to any other remedy available to the city under this code, at law or in equity, violations of this section 17.12.050 may be remedied as follows:
1. The city attorney or city prosecutor may bring a civil action to enforce this section and to obtain the remedies specified below or otherwise available in equity or at law.
  2. Any person acting for the interests of him-, her-, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this section with the remedies specified below, if both the following requirements are met:
    - a. The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this section to the city attorney and to the alleged violator.
    - b. No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
  3. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.
  4. Upon settlement of or entry of judgment in an action brought pursuant to paragraph (7) of this subsection (I), the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
  5. Upon proof of a violation of this section, the court shall award the following:
    - a. Damages in the amount of either:
      - i. Upon proof, actual damages;
      - ii. With insufficient or no proof of damages, two hundred fifty dollars (\$250.00) for each violation of this section (hereinafter "statutory damages"). Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.

**Comment [A44]:** This language appears in Prop. 64 and in the City's second-hand smoke ordinance. I was directed by the Council to use it. Whether to allow private attorney general actions without oversight by the City Attorney is a policy question for the Council.

**Comment [A45]:** Is this required or appropriate for inclusion in this document?

**Comment [A46]:** Can this be increased to a meaningful amount?

**Comment [A47]:** The City's power to impose criminal fines for violations of its code is limited to \$1,000. While those statutes do not directly apply to the City's power to establish what amount to civil fines, judges are likely to look to them. While there may be some room to increase this figure, I would not recommend increasing it much. Note that this figure applies only when a plaintiff can prove no other damages (they get as much as they can prove) and that each day is a separate violation, so \$250 per day could add up quickly.

- b. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
- c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
- d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

- 6. Upon proof of at least one violation of this section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this section or, as to small claims court actions, a judgment payable on condition that a further violation of this section occur within a time specified by the court.
- 7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.
- 8. Nothing in this section shall prohibit a private enforcer from bringing an action to enforce this section in small claims court, provided the relief sought is within the jurisdiction of that court.

J. **Additional Notice to Neighbors.** After an application to allow the installation of a wireless facility pursuant to subsections C and D of this section is complete, the city shall endeavor to provide property owners at least 30 days' prior notice of the initial public hearing on the matter as follows:

- 1. Written notice shall be mailed to the record owner of each property within 1,000 feet of the proposed site;
- 2. Telephone notice via the city's reverse 911 service shall be given to owners or occupants of properties more than 1,000, but within 1,500, feet of the proposed site.

A public hearing may be set on less than 30 days' notice if necessary to comply with applicable law, including but not limited the Federal Communications Commission Declaratory Ruling 09-99, WT docket number 08-165, released November 18, 2009 (the "Shot Clock" ruling) as it now exists or may hereafter be amended.

Failure of the city to provide notice pursuant to this subsection J shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.

**Comment [A48]:** Can "endeavor to" be removed?

**Comment [A49]:** Yes.

**Comment [A50]:** This is what I understood the Council to have directed me to draft. In any event, this is a policy question and the ordinance can be drafted to require any reasonable radius.

**Comment [A51]:** Please double check distance to make sure this is council's direction.

CTC recommends 1500.