

DRAFT ORDINANCE NO. 2019-375

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA AMENDING CALABASAS MUNICIPAL CODE, SECTION 17.12.050 RELATED TO ANTENNAS/PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES TO ADD PROVISIONS SPECIFICALLY REGULATING SMALL WIRELESS FACILITIES COVERED UNDER 47 C.F.R. SECTION 1.6001 ET SEQ.

WHEREAS, the City Council of the City of Calabasas, California (the "City Council") has considered all of the evidence including, but not limited to, the Communications and Technology Commission Resolution, Planning Division staff reports and attachments, and public testimony before making a final decision; and

WHEREAS, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq.; and

WHEREAS, 47 C.F.R. section 1.6001 et seq. implements 47 U.S.C. sections 332(c)(7) and 1455, regulating the collocation, modification, and deployment of wireless facilities; and

WHEREAS, FCC 18-133 is intended to streamline the process of collocating and deploying small wireless facilities necessary to support the 5G network infrastructure; and

WHEREAS, FCC 18-133 shortens the shot clock for reviewing small wireless facility permit applications, limits the amount of fees that can be assessed for the review, regulates aesthetic requirements, among others; and

WHEREAS, FCC 18-133 takes effect on January 14, 2019, and preempts any and all conflicting local ordinances and regulations; and

WHEREAS, given the short time period before the effective date of the new regulations, which require that the City approve applications for small wireless facilities, time is of the essence to avoid the City being unable to timely review and evaluate applications brought under this new federal regulatory scheme; and

WHEREAS, the adoption of an administrative regulatory process to review, evaluate, and approve if warranted, applications for small wireless facilities is necessary to protect the public's health, safety, and welfare by complying with

federal law, thereby preserving to the maximum extent possible the City's ability to regulate the collocation to existing structures and the deployment to new structures; and

WHEREAS, the City Council finds that this Land Use and Development Code Amendment is consistent with the goals, policies, and actions of the General Plan and will not conflict with the General Plan; and

WHEREAS, this Land Use and Development Code Amendment implements the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law; and

WHEREAS, the City Council finds that this Land Use and Development Code Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and

WHEREAS, the proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with Section 21084 of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under Section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines; and

WHEREAS, the City Council has considered the entirety of the record, which includes without limitation, The Calabasas General Plan; all reports, testimony, and transcripts from the Communications and Technology Commission's DATE meeting; and reports, and testimony at the City Council's DATE meeting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the foregoing the City Council finds:

1. Notice of the DATE City Council public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Agoura Hills/Calabasas Community Center, Gelson's Market and at Calabasas City Hall.
2. Notice of the DATE City Council public hearing was posted in the *Acorn* ten (10) days prior to the hearings.
3. Notice of the DATE City Council public hearing included the information set forth in Government Code Section 65009, subdivision (b)(2).

5. Following a public hearing held on DATE, the Communications and Technology Commission adopted Resolution No. NUMBER recommending to the City Council approval of File No. NUMBER.

SECTION 2. In view of all the evidence and based on the foregoing findings, the City Council concludes as follows:

Section 17.76.050(B) and Section 17.12.050(I) of the Calabasas Municipal Code allows the Communications and Technology Commission to recommend and the City Council to approve a Development Code change relating to wireless communication facilities provided that the following findings are made:

1. *The proposed amendment is consistent with the goals, policies, and actions of the General Plan;*

The proposed amendment meets this finding because it maintains and strengthens the policies of the General Plan, including those in the Services, Infrastructure & Technology Element that are intended to encourage the development and maintenance of fast and secure communications networks in order to allow residents to take advantage of the benefits of personal wireless services. Specifically, the proposed amendment will encourage access to fast and secure broadband networks, as called for by Policy XII-35, by ensuring that the City's wireless facility ordinance complies with applicable federal law. The Federal Communications Commission (FCC) recently adopted regulations implementing Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L No. 112-96, 126 Stat. 156, codified at 47 U.S.C. § 1455) which provides that the City "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1); 47 C.F.R. §§ 1.40001, et seq.) The FCC's Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq. also implements the Telecommunications Act of 1996, intended to preempt state and local legal requirements that act as a barrier to entry in the provision of interstate and intrastate telecommunication services. The proposed amendment complies with this federal law, which requires a streamlined review process for, and limits the City's power to deny, new small wireless facilities and certain proposed modifications of existing small wireless facilities, while preserving to the maximum extent possible the City's procedural and substantive requirements for modifications to existing small wireless facilities.

2. *The proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the city;*

The proposed amendment is not detrimental to the public interest, health, safety, convenience, or welfare of the City as the proposed amendment does not modify either the radio frequency emissions standards applicable to personal wireless telecommunications facilities, which are set by the Federal Communications Commission, or the health and safety requirements of Title 15 of the Calabasas Municipal Code. The proposed amendment complies with federal law by creating a streamlined review process and specifying required findings for approval of certain federally protected proposed small cell sites. The proposed amendment does not change any health or safety standard and does not permit approval of any modifications to existing wireless telecommunications facilities that violate the health and safety requirements of Title 15 of the Calabasas Municipal Code or any other applicable law.

3. *The proposed amendment is in compliance with the provisions of the California Environmental Quality Act (CEQA).*

The Council finds that the proposed amendment is exempt from CEQA review because there is no possibility that this amendment, which does not directly authorize any new construction or development, may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. The proposed amendment does not authorize any new construction or development; rather it modifies the City's existing standards for reviewing and approval proposed modifications to small wireless facilities to comply with federal law. Further, every proposed small wireless facility governed by the proposed amendment will receive individualized CEQA review unless otherwise exempt under CEQA. Accordingly, the Council finds that the proposed amendment is exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that that it will have a significant effect on the environment.

Additionally, the Council finds that the proposed amendment, adopting provisions necessary to comply with Declaratory Ruling and Report and Order (FCC 18-133) (47 C.F.R. section 1.6001 et seq.), does not qualify as a "project" under CEQA Guidelines Section 15378(b)(5). Section 6409(a) requires that State and local governments "may not deny, and shall approve" any "eligible facilities request" for collocation or modification of wireless transmission equipment so long as it does not "substantially change the physical dimensions of the existing wireless tower or base station." Under CEQA Guidelines Section 15378(b)(5), a "project" does not include "administrative activities of governments that will not result in direct or indirect physical changes in the environment." The proposed amendment is an administrative activity because it

creates an administrative process to determine whether federal law mandates that the City approve an application for a modification to an existing wireless telecommunications facility. The proposed amendment will not "result in direct or indirect physical changes in the environment" because federal regulations deem all applications for the modification of existing wireless towers and base stations granted so long as such modification does not substantially change the physical dimensions of the wireless tower or base station. Any physical changes in the environment will therefore occur whether the City adopts the regulations or not. Accordingly, the Council finds that the regulations related to Section 6409(a) in the proposed amendment do not qualify as a "project" under CEQA Guidelines Section 15378(b)(5) because it constitutes administrative activities of government that do not directly or indirectly result in any physical changes in the environment. A Notice of Exemption has been prepared.

4. *The proposed amendment is internally consistent with other applicable provisions of this development code.*

The proposed amendment complies with federal law by creating a streamlined review process and specifying required findings for approval of certain federally protected proposed small cell wireless sites and modifications to existing wireless telecommunications facilities. The proposed amendment also clarifies which proposed modifications to existing wireless telecommunications facilities must be approved by a wireless facility permit and which must be approved by the new, streamlined wireless facility minor modification permit. The new requirements for certain federally protected proposed modifications to existing wireless telecommunication facilities fit within the context of the wireless facility ordinance and do not conflict with any other provision of the Development Code, therefore, the proposed amendment meets this finding.

SECTION 3. Code Amendment. Calabasas Municipal Code Section 17.12.050, subsection (C) is hereby amended to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

- C. Standards for all personal wireless telecommunication facilities. All personal wireless telecommunication facilities, including a small wireless facility, shall comply with the following requirements:

1. Permit Requirements. No new personal wireless telecommunication facility shall be installed until the applicant or operator has obtained: (i) a wireless facility permit or small wireless facility permit (as specified in Section 17.12.050(G)), (ii) an encroachment permit from the public works department (if applicable), 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 modifications to an existing personal wireless telecommunications facility that do not meet the findings of approval required for a wireless facility minor modification permit as specified in Section 17.12.050(F) or a small wireless facility permit as specified in Section 17.12.050(G), shall be subject to the approval of (i) a wireless facility permit, in addition to (ii) an encroachment permit from the public works department (if applicable), and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or an oak tree permit. Applications for wireless facility permits shall be first reviewed by the development review committee. All applications for wireless facility permits will be scheduled for a public hearing before the commission in accordance with Section 17.12.050(L) and Chapter 17.78 of this code. The commission shall determine if a proposed project for which a wireless facility permit is required is the least intrusive means to close a significant gap in the applicant's service coverage. All modifications to an existing personal wireless facility that meet the conditions of approval required for a wireless facility minor modification permit as specified in Section 17.12.050(F) shall be subject to the approval of (i) a wireless facility minor modification permit, in addition to (ii) an encroachment permit from the public works department (if applicable), and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or an oak tree permit.

2. Wireless Facility Permit Application Content. Applications for the approval of wireless facility permits for personal wireless telecommunication facilities shall include, but are not necessarily limited to, an application fee and the following information, in addition to all other information required by the city for a wireless facility 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 Section 17.12.050(C)(3); 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; and
 - c. For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by Section 6409(a) of the 2012 Middle Class Tax Relief Act, using the proposed project as a baseline; and
 - d. 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 anticipated for construction within two 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 two years from approval of a wireless facility permit unless: (i) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a personal wireless telecommunication facility site not shown on a master plan submitted to the city within the prior two years or (ii) the applicant establishes before the commission that a new personal wireless telecommunication facility is necessary to close a significant gap in the applicant's personal communication service, and the proposed new installation is the least intrusive means to do so; and
- e. A siting analysis which identifies a minimum of five other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site; and
 - f. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power"; and
 - g. 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; and
 - h. A noise study, prepared by a qualified engineer, for the proposed personal wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; and
 - i. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed personal wireless telecommunication facility wherever technically and economically feasible and aesthetically desirable; and

- j. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code Section 65940, or to respond to changes in law or technology.
 - k. An application for a personal wireless telecommunication facility in a public right-of-way for which the applicant claims entitlement under California Public Utilities Code Section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.
3. New Wireless Facility Permit-Preferred Zones and Locations. When doing so would not conflict with one of the standards set forth in this subsection (C) or with federal law, personal wireless telecommunication facilities subject to the approval of a wireless facility permit or small wireless facility permit shall be located in the most appropriate location as described in this subsection (3), which range from the most appropriate to the least appropriate. Nothing in this section shall detract from the requirements of Section 17.12.050(C)(4)(a) below.
- i. Collocation on an existing facility in a commercial zone;
 - ii. Collocation on an existing structure or utility pole in a commercial zone;
 - iii. Location on a new structure in a commercial zone;
 - iv. Collocation on an existing facility in a public facility or recreation zone;
 - v. Location on an existing structure or utility pole in a public facility or recreation zone;
 - vi. Location on a new structure in a public facility or recreation zone.

No new facility may be placed in a less appropriate area unless the applicant demonstrates to the satisfaction of the commission or director that no more appropriate location can feasibly serve the area the facility is intended to serve provided, however, that the commission or director 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. Personal wireless telecommunication facilities, including small wireless facilities, shall be designed and maintained as follows:
- a. All new personal wireless telecommunication facilities that do not meet the findings of approval for a small wireless facility permit as specified in Section 17.12.050(G), shall be set back at least one thousand (1,000) feet from schools, dwelling units and parks, as measured from the closest point of the personal wireless telecommunication facility (including accessory equipment) to the applicable property line, unless

an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant's personal communication service, and the proposed personal wireless telecommunication facility is the least intrusive means to do so. An applicant who seeks to increase the height of an existing personal wireless telecommunication facility, or of its antennas, located less than one thousand (1,000) feet from a school, dwelling unit or park and who is subject to the approval of a wireless facility permit for the proposed height increase must establish that such increase is necessary to close a significant gap in the applicant's personal communication service, and the proposed increase is the least intrusive means to do so.

- b. Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures.
 - c. Unless otherwise prohibited by state or federal law, all equipment not located on a roof shall be underground; any equipment that is not undergrounded shall be screened from adjacent uses to the maximum extent feasible.
 - 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. At no time shall equipment noise (including air conditioning units) from any facility exceed the applicable noise limit established in Section 17.20.160 of this title at the facility's property line; provided, however, that for any such facility located within five hundred (500) feet of any property zoned open space or residential, or improved with a residential use, such equipment noise shall at no time be audible at the property line of any open space or residentially zoned, or residentially improved property.
 - f. If the majority of radio frequency coverage from the proposed facility is outside the city limits, the applicant must, in addition to the other requirements of this section, prove that the applicant is unable to locate the proposed new facility within the locale or locales that will receive the majority of the coverage from the proposed personal wireless telecommunications facility, and that no other feasible location for the facility exists outside of the city limits. That an applicant for a wireless facility permit in the city has been denied a wireless facility, antenna, or wireless coverage in another jurisdiction shall not be considered evidence or proof that the applicant is unable to locate in another jurisdiction.
5. Independent Expert Review. The city shall retain one or more independent, qualified consultants to review any application for a wireless facility permit for a personal wireless telecommunication facility, for a wireless facility

minor modification permit, or for a small wireless facility permit. The review is intended to be a review of technical aspects of the proposed wireless telecommunication facility or modification of an existing wireless telecommunication facility and shall address any or all of the following, as applicable:

- a. For wireless facility permits, whether the proposed wireless telecommunication facility is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- b. The accuracy and completeness of submissions;
- c. For wireless facility permits, technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
- d. The applicability of analysis techniques and methodologies;
- e. For wireless facility permits, the viability of alternative sites and alternative designs; and
- f. For wireless facility permits, an analysis of the potential expansion that would be considered an eligible facility request under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012; and
- g. Any other specific technical issues designated by the city.

The cost of the review shall be paid by the applicant through a deposit estimated to cover the cost of the independent review, as established by the director or City Council.

6. Conditions of Approval. All facilities subject to a wireless facility permit approved under this section shall be subject to the following conditions, as applicable:

- 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. Abandonment:
 - 1) Personal wireless telecommunication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner 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 non-operation to the owner and operator of the personal wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer

appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. Any such hearing shall be conducted pursuant to Chapter 17.74 of this title, although no further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

- 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 completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.
 - 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, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.
- c. The applicant, operator of a facility and property owner (when applicable) 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, location, inspection or maintenance of the facility.
- d. Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code Section 65964(b), any personal wireless telecommunication 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. Written notice of a determination pursuant to this paragraph shall be sent to the owner and operator of the personal wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. Any such hearing shall be conducted pursuant to Chapter 17.74 of this title, although no further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or

- the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.
- e. The owner or operator of any personal wireless telecommunication facility approved by a wireless facility permit under this subsection C of this Section 17.12.050 shall cooperate with the director to: (1) verify that the facility design conforms with relevant building and safety requirements; and (2) verify that the facility complies with the requirements of Section 17.12.050 of the Calabasas Municipal Code.
 - f. Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the City of Calabasas Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this code and all conditions of approval, and shall be specified in the conditions of approval.)
 - g. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a personal wireless telecommunication facility.
 - h. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.
 - i. A personal wireless telecommunication facility approved by a wireless facility permit may operate only until the tenth anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued under this Section 17.12.050. There is no limit to the number of times the sunset date for a facility may be extended.
7. Wireless Facility Permit Findings. In addition to the findings required in Section 17.62.060 of this code, no wireless facility permit for a proposed personal wireless telecommunication facility may be approved unless the commission or council finds as follows:
- 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 in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.

- 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 Section 17.12.050 of the Calabasas Municipal Code.
- c. The facility satisfies the location requirements of Section 17.12.050(C)(3) of the Calabasas Municipal Code.

8. Violations. The city may revoke a wireless facility permit for any personal wireless telecommunication 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.

SECTION 4. Code Amendment. Calabasas Municipal Code Section 17.12.050, subsection (D) is hereby amended to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

D. Standards for Personal Wireless Telecommunication Facilities Not Located Within a Public Right-of-Way. In addition to the requirements in section (C) above, all personal wireless telecommunication facilities subject to the approval of a wireless facility permit or small wireless facility permit, and not located within a public right-of-way, shall comply with the following requirements:

1. Location Requirements. To minimize aesthetic and visual impacts on the community, personal wireless telecommunication facilities shall be located according to the following standards:

a. General Requirements.

i. A freestanding telecommunications tower or monopole shall be set back a distance of at least one hundred fifty (150) percent of the height of the tower from the nearest property line of any residentially zoned or occupied lot.

b. Restricted Locations. Personal wireless telecommunication facilities located in any of the following locations must be designed as a stealth facility:

- i. Within any nonresidential zone on a site that contains a legally established residential use; and
- ii. Within the Old Town overlay zone; and
- 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; and
- v. Within a scenic corridor designated by the city; and
- vi. Within a historic district designated by the city; and
- ~~vii. Within HOA-owned property in any zone.~~

- c. Prohibited Locations. No personal wireless telecommunication facility shall be established on any ridgeline or within any residential or open space zoning district described in subparagraphs (i), (ii) and (iii) herein.
 - i. Ridgelines. No personal wireless telecommunication facility shall be placed on or near a ridgeline.
 - ii. Residential Zones. No facility shall be located within a residential zone, including areas set aside for open space, parks or playgrounds.
 - iii. Open Space. No facility shall be located within an open space zone or park.

Any wireless telecommunication facility proposed for a site within any open space zone shall not be deemed a "public utility" as that term is otherwise defined and understood in the Calabasas Municipal Code regarding development in such open space zones.

- 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 stealth facility mounted on an existing structure or collocated on an existing tower;
 - ii. A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
 - iii. A stealth facility mounted on a new steel, wood or concrete pole.

2. Design and Development Standards. Personal wireless telecommunication facilities shall be designed and maintained as follows:

- a. 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.

- b. All accessory equipment associated with the operation of a personal wireless telecommunication 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.
3. City Council Approval Required. Notwithstanding Section 17.12.050(D)(1)(c), personal wireless telecommunication facilities subject to the approval of a wireless facility permit may be permitted in a prohibited location only if the applicant obtains a wireless facility permit from the city council following a public hearing and recommendation from the communication and technology commission, and provides technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the city, that it 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.

SECTION 5. Code Amendment. Calabasas Municipal Code Section 17.12.050, subsection (E) is hereby added to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

- E. Standards for Personal Wireless Telecommunication Facilities Located Within Public Rights-of-Way. In addition to the requirements in section (C) above, all personal wireless telecommunication facilities subject to the approval of a wireless facility permit or small wireless facility permit, and located within public rights-of-way, shall comply with the following requirements to the fullest extent permitted by state and federal law:
 1. Construction. These standards are intended to exert the maximum authority available to the city in the regulation of personal wireless telecommunication 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. The purpose of this subsection (E) is to regulate personal wireless telecommunications facilities proposed for sites within public rights-of-way consistently with the rights conferred on telephone corporations by Public Utilities Code §§ 7901 and 7901.1 and to address the aesthetic and safety concerns unique to such proposals due to their highly visible location in rights-of-way that must be safely shared with pedestrians, motorists and other utility infrastructure.
 2. Application Content. Applications for the approval of personal wireless telecommunication facilities within the public right-of-way shall include the following information, in addition to all other information required by subsection (C)(2) above:

- a. The applicant shall provide certification that the facility is for the use of a telephone corporation or state the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
3. Guidelines. All personal wireless telecommunication facilities, including small wireless facilities as specified in Section 17.12.050(G), located within a public right-of-way shall be designed as follows:
 - a. 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.
 - b. Facilities located within a designated scenic corridor or historic districts shall be stealth 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.
 - c. Personal wireless telecommunication 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.
 - d. Pole-mounted equipment shall not exceed six cubic feet.
 - e. Pole-mounted antennas shall adhere to the following guidelines:
 - i. If an antenna cannot be mounted as set forth in subsection (a), it may be mounted in accordance with subsection (b). If an antenna cannot be mounted as set forth in either subsection (a) or (b), it may be mounted in accordance with subsection (c):
 - (a) A stealth facility mounted on an existing, collocated monopole or tower;
 - (b) A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
 - (c) A stealth 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 six 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 or monopole shall be set back a distance of at least one hundred fifty (150) percent of the height of the tower to the nearest structure designed for occupancy.
 - f. 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 case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.
 - g. Facilities shall not be located within five hundred (500) feet of another wireless facility on the same side of a street.
 - h. 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.
4. Findings. In addition to the findings required in subsection (C)(7) above, no proposed personal wireless telecommunication facility subject to the approval of a wireless facility permit or small wireless facility permit within a public right-of way may be approved unless the following findings are made:
- a. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
 - b. 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.
5. Conditions of Approval. In addition to compliance with the guidelines outlined in paragraph (3) of this subsection and the conditions of approval listed in subsection (C)(6) above, all facilities approved under this subsection (E) shall be subject to the following conditions:
- a. 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, 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.

- b. The applicant or operator of the personal wireless telecommunication facility shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the City, and the owner in the circumstance where the owner is not the City. No structure, improvement or facility owned by the city shall be moved to accommodate a personal wireless telecommunication 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 personal wireless telecommunication 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 personal wireless telecommunication 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.
- c. Should any utility company offer electrical service to a wireless facility which service does not require the use of a meter cabinet, the applicant or operator of the facility shall at its cost remove the meter cabinet and any foundation thereof and restore the area to its prior condition.

SECTION 6. Code Amendment. Calabasas Municipal Code Section 17.12.050, subsection (G) is hereby added to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

- G. Requirements for Small Wireless Facility Permits. This subsection governs applications for small wireless facilities permits.
 1. Purpose. Subsection (G) is intended to comply with the City's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or

the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

2. Applicability. An applicant seeking approval of a collocation to an existing structure or a deployment to a new structure which the applicant contends is within the protection of Title 47, United States Code, section 1455 shall apply for the following at the same time: (i) a small wireless facility permit, (ii) an encroachment permit from the public works department (if required by applicable provisions of this Code), and (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.
3. Application Content: All applications for a small wireless facility permit must include the following items:
 - a. Application Form. The city's standard application form, available on the city's website or from the community development department, as may be amended.
 - b. Application Fee. An application fee as established by the council by resolution under the authority of Section 17.60.040.
 - c. Independent Consultant Deposit. An independent consultant fee deposit, if required by the council by resolution under the authority of Section 17.60.040, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
 - d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - i. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - ii. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - iii. A depiction of all existing and proposed utility runs and points of contact.
 - iv. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - v. All four (4) elevations that depict the physical dimensions of the wireless tower or support structure and all transmission equipment, antennas and attachments.
 - vi. A demolition plan.

- e. Visual Simulations. A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- f. Statement Asserting that 47 C.F.R. section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. section 1.6002.
- g. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulation implementing this federal law.
- h. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."
- i. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed small wireless facility complies with all applicable building codes.
- j. Noise Study. A noise study, prepared by a qualified engineer, for the proposed personal wireless telecommunication facility including, but not limited to, equipment, such as air conditioning

units and back-up generators. The noise study shall assess compliance with Section 17.12.050(C)(4)(e).

- k. Site Survey. For any small wireless facility proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures with 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, oak trees, planters and other landscaping features.
 - l. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).
4. Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. Prior to the end of the appeal period, the director shall provide written notice to all property owners within 300 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.

Applicants may submit up to five individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed

incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

5. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.
6. Standards Governing Approval by Director
 - a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - i. The existing structure was constructed and maintained with all necessary permits in good standing.
 - ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
 - iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than 28 cubic feet in volume.
 - v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.

- vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
- vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
- viii. The proposed collocation is consistent with the wireless facility permit preferred zones and locations requirement of section 17.12.050(C)(3).
- ix. The proposed collocation is consistent with the design and development standards of sub-section 17.12.050(C)(4), except that sub-sections 17.12.050(C)(4)(a) & (f) do not apply.
- x. The proposed collocation is consistent with the independent expert review provisions of sub-section 17.12.050(C)(5).
- xi. The proposed collocation is consistent with the conditions of approval provisions of sub-section 17.12.050(C)(6).
- xii. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of sub-section 17.12.050(D).
- xiii. For collocation located within the public right-of-way, the proposed collocation shall be consistent with subsection 17.12.050(E), except that sub-sections 17.12.050(E)(3)(g) does not apply.
- xiv. The proposed collocation would be in the most preferred location and configuration within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within 250 feet would be technically infeasible, applying the preference standards of this section.
- xv. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- b. The director may approve an application for a small wireless facility permit only if each of the following findings can be made:
 - i. The proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 - ii. The proposed project would be in the most preferred location as identified in Section 17.12.050(C)(3), within 250 feet from the proposed site in any direction, or the applicant has demonstrated with clear and convincing

- evidence that any more preferred location(s) within 250 feet would be technically infeasible;
- iii. The proposed project complies with the standards for a small wireless facility as specified in Section 17.12.050(G)(6)
 - iv. For proposed project not located within the public right-of-way, the proposed project complies with sub-section 17.12.050(D)
 - v. For proposed projects located within the public right-of-way, the proposed project complies with subsection 17.12.050(E), except that sub-section 17.12.050(E)(3)(g), does not apply.
 - vi. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
7. Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this Code that the director deems appropriate or required under this Code, all small wireless facility permits under this subsection shall include the following conditions of approval:
- a. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
 - b. Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.
 - c. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
 - d. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless City, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the small wireless facility permit and the issuance of any permit or

- entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by City, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the City reasonably determines necessary to protect the City from exposure to fees, costs or liability with respect to such claim or lawsuit.
- e. Compliance with applicable laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
 - f. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the Planning Division.
 - g. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. 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.
 - h. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a small wireless facility permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
 - i. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any small wireless facility permit issued pursuant to Title 47, United States Code, section 1455 or this code.
8. Small Wireless Facility Permit Denial Without Prejudice

- a. Grounds for denial without prejudice. The Director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:
 - i. The Director cannot make all findings required for approval of a small wireless facility permit;
 - ii. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
 - iii. the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
 - iv. the proposed collocation or deployment does not qualify for mandatory approval under Title 47, United States Code, section 1455, as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.
- b. Procedures for denial without prejudice. All small wireless facility permit application denials shall be in writing and shall include (i) the decision date; (ii) a statement that the City denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.
- c. Submittal after denial without prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - i. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
 - ii. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - iii. submit an appeal of the Director's decision.
- d. Costs to review a denied permit. The City shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the City shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

SECTION 7. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (G) is hereby renumbered to be Section 17.12.050, subsection (H).

SECTION 8. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (H) is hereby renumbered to be Section 17.12.050, subsection (I).

SECTION 9. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (I) is hereby renumbered to be Section 17.12.050, subsection (J).

SECTION 10. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (J) is hereby renumbered to be Section 17.12.050, subsection (K).

SECTION 11. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (K) is hereby renumbered to be Section 17.12.050, subsection (L).

SECTION 12. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (L) is hereby renumbered to be Section 17.12.050, subsection (M).

SECTION 13. Code Amendment. The existing Calabasas Municipal Code Section 17.12.050, subsection (M) is hereby renumbered to be Section 17.12.050, subsection (N) and is hereby amended to read as follows:

N. Definitions. In addition to the definitions provided in Chapter 17.90 of this title and in Chapter 1.08 of Title 1 of this Code, this Section 17.12.050 shall be construed in light of the following definitions:

"Accessory equipment" means any equipment installed, mounted, operated or maintained in close proximity to a personal wireless telecommunication facility to provide power to the personal wireless telecommunication facility or to receive, transmit or store signals or information received by or sent from a personal wireless telecommunication facility.

"Antenna structure" means any antenna, any structure designed specifically to support an antenna and/or any appurtenances mounted on such a structure or antenna.

"Applicable law" means all applicable federal, state and local law, ordinances, codes, rules, regulations and orders, as the same may be amended from time to time.

"Applicant" includes any person or entity submitting an application to install a personal wireless telecommunication facility under this section and the persons within the scope of the term "applicant" as defined by Section 17.90.020 of this code.

"Base station" means the equipment and non-tower supporting structure at a fixed location that enables Federal Communications Commission licensed or authorized wireless telecommunications between user equipment and a communications network.

"City" means the City of Calabasas and is further defined in Section 1.08.020 of this code.

"Collocation" means the mounting or installation of additional wireless transmission equipment at an existing wireless facility.

"Commission" has the meaning set forth in paragraph (l) of this section.

"dBA" is defined in Chapter 17.90 of this title.

"Director" means the City of Calabasas Community Development Director or his or her designee.

"FCC" means the Federal Communications Commission or any successor to that agency.

"In-kind call testing" means testing designed to measure the gap in coverage asserted by an applicant. If a claimed gap is for in-building coverage, then in-building call testing must be performed to establish the existence or absence of such a gap unless the applicant provides a sworn affidavit demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing and the circumstances that prevented the applicant from conducting such testing. Claimed gaps in service for "in-vehicle" or "open-air" service may be demonstrated by call testing performed in vehicles or in the open.

"Least intrusive means" means that the location or design of a personal wireless telecommunication facility addresses a significant gap in an applicant's personal communication service while doing the least disservice to the policy objectives of this chapter as stated in Section 17.12.050(A). Analysis of whether a proposal constitutes the least intrusive means shall include consideration of means to close an asserted significant gap by co-locating a new personal wireless telecommunication facility on the site, pole, tower, or other structure of an existing personal wireless telecommunication facility.

"Monopole" means a structure composed of a single spire, pole, or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm, and similar monopoles camouflaged to resemble faux objects attached on a monopole.

"MPE" means maximum permissible exposure.

"Non-tower supporting structure" means any structure, whether built for wireless communications purposes or not, that supports wireless transmission equipment under a valid permit at the time an applicant submits an application for a permit under this Code and which is not a wireless tower.

"OET" or "FCC OET" means the Office of Engineering & Technology of the Federal Communications Commission.

"Open space" includes (1) land which is zoned OS, OS-DR, or REC, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, private parks, slope easements, and (4) any other area owned by a homeowners association or similar entity.

"Park" and "playground" shall have their ordinary, dictionary meanings.

"Personal communication service" means commercial mobile services provided under a license issued by the FCC.

"Personal wireless telecommunication facility," "wireless telecommunication facility," or "wireless facility" means a structure, antenna, pole, tower, equipment, accessory equipment and related improvements used, or designed to be used, to provide wireless transmission of voice, data, images or other information, including but not limited to cellular phone service, personal communication service and paging service.

"Private enforcer" has the meaning provided in subsection (K)(2) of this Section 17.12.050.

"Residential zone" means a zone created by Chapter 17.13 of this title.

"RF" means radio frequency.

"Significant gap" as applied to an applicant's personal communication service or the coverage of its personal wireless telecommunication facilities is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.
3. A significant gap may be measured by:

- a. The number of people affected by the asserted gap in service;
- b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;
- c. Whether the asserted gap affects Highway 101, a state highway, or an arterial street which carries significant amounts of traffic.

"Small wireless facility" means a personal wireless telecommunication facility that also meets the definition of a small wireless facility by the FCC in 47 C.F.R. Section 1.6002, as may be amended or superseded.

"Stealth facility" means any personal wireless telecommunication facility which is designed to substantially blend into the surrounding environment by, among other things, architecturally integrating into a structure or otherwise using design elements to conceal antennas, antenna supports, poles, equipment, cabinets, equipment housing and enclosure; and related above-ground accessory equipment.

"Transmission equipment" or "wireless transmission equipment" means any equipment that facilitates transmission for any Federal Communications Commission licensed or authorized wireless communication service, including but not limited to, radio transceivers, antennas and other equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supplies.

"Wireless" means any Federal Communications Commission licensed or authorized wireless telecommunications service.

"Wireless facility minor modification permit" means a permit issued under this chapter authorizing the modification of an existing personal wireless telecommunications facility. The procedures for the application for, approval of, and revocation of such a permit shall be those required by this title, including but not limited to Section 17.12.050(F).

"Wireless facility permit" means a permit issued under this chapter authorizing the installation, operation and maintenance of a personal wireless telecommunications facility. Except as otherwise provided by this chapter, the procedures for the application for, approval of, and revocation of such a permit shall be those required by this title (including, but not limited to, those of Section 17.62.060) for a conditional use permit.

"Wireless tower" or "Telecommunications tower" mean any structure, including a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure, designed and constructed for the primary purpose of supporting any Federal Communications Commission licensed or authorized wireless telecommunications facility antennas and their associated facilities.

SECTION 14. Severability Clause:

Should any section, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION 15. Effective Date:

This Ordinance shall take effect thirty days from passage and adoption under California Government Code Section 36937.

SECTION 16. Certification:

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED this th day of March, 2019.

David Shapiro, Mayor

ATTEST:

Maricela Hernandez, MMC
City Clerk

APPROVED AS TO FORM:

Scott H. Howard
Colantuono, Highsmith & Whatley, PC
City Attorney