

Ordinance No. 2021-391
Exhibit B

Chapter 17.31 – Wireless Telecommunication Facilities

17.31.010 – Purpose

- A. Purpose and Intent. The purpose of this Chapter is to regulate the installation, operation and maintenance of wireless telecommunication facilities in the city. The city recognizes that the unrestricted installation of redundant personal wireless telecommunication facilities is 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.

In enacting this Chapter, the city intends to:

1. Promote and protect the health, safety, comfort, convenience and general welfare of residents and business in accord with Section 17.01.020 of this title;
2. Protect the benefits derived by the city, its residents and the general public from access to personal wireless services while minimizing, to the greatest extent feasible, the redundancy of personal wireless telecommunication facilities in the city;
3. Balance these goals, by permitting the installation and operation of wireless telecommunication facilities where they are needed, while reducing, to the greatest extent feasible, adverse economic, safety and/or aesthetic impacts on nearby properties and the community as a whole; and
4. Comply with applicable law, including the 1996 Telecommunications Act.
5. This section is intended to regulate all uses of wireless communications in the city, including uses by public utilities, to the extent of the city's power to regulate the use of land under federal and state law, but not to exceed the scope of the city's authority.

17.31.020 - Applicability

- A. Applicability. This Chapter applies to all proposed antennas and modifications and related wireless telecommunication facilities, as follows:
1. All applications for approval of the installation of new wireless telecommunication facilities in the city.

2. All facilities for which applications were received by the department but not approved prior to the effective date of the ordinance codifying this Chapter, shall comply with the regulations and guidelines of this Chapter.
 3. All facilities for which applications were approved by the city on or prior to the effective date of the ordinance codifying this Chapter shall be exempt from this section, except for the requirements of subsections 17.31.030(B)(1)(e) and 17.31.030(B)(2)(b).
 4. All facilities for which applications have been previously approved, but are now or hereafter modified.
- B. Permit Requirements. No wireless telecommunication facility shall be installed or modified until the applicant or operator has obtained:
1. A Tier 1 Wireless Telecommunication Facility Permit as specified in Section 17.31.040, or
 2. A Tier 2 Wireless Telecommunication Facility Permit as specified in Section 17.31.050, or
 3. A Minor Modification Permit as specified in Section 17.31.060, or
 4. A Small Wireless Facility Permit as specified in Section 17.31.070; and
 5. Any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

All new wireless telecommunication facilities and modifications to an existing wireless facility shall be subject to a Tier 2 Wireless Telecommunication Facility Permit if the proposed facility does not meet the criteria for a Tier 1 Wireless Telecommunication Facility Permit, Minor Modification Permit, or Small Wireless Facility Permit.

17.31.030 – General Standards and Conditions of Approval

The following standards and conditions of approval shall apply to all new wireless telecommunication facilities or modifications to existing wireless facilities.

A. Standards

1. Standards for wireless telecommunication facilities located within the public right-of-way.
 - a. Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures.
 - b. Unless otherwise prohibited by state or federal law, all equipment not located on a pole shall be underground; any equipment that is not

undergrounded shall be screened from adjacent uses to the maximum extent feasible.

- c. 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.
- d. 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.
- e. Pole-mounted equipment, not including antennas, shall not exceed six (6) cubic feet.
- f. 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.
- g. 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 seven (7) 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.
- h. 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.
- i. 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 or director
- j. 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 or on an existing pole consistent with Section 17.31.030(A)(1)(e), excluding required electrical meters. However, if such facilities cannot be placed underground, ground-mounted equipment may be installed up to a

height of five (5) feet and to a footprint of fifteen (15) square feet. 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 or director.

- k. 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.
 - l. 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.
 - m. 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.
 - n. Pole-mounted antennas shall adhere to the following guidelines. 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, collocated monopole or tower;
 - (ii) A stealth facility mounted on an existing steel, wood, or concrete pole, including a light standard; or
 - (iii) 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.
2. Standard for wireless telecommunication facilities not located within the public right-of-way.
- a. Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures.
 - b. Unless otherwise prohibited by state or federal law, all equipment not located on a pole shall be underground; any equipment that is not undergrounded shall be screened from adjacent uses to the maximum extent feasible.

- c. 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.
- d. 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.
- e. 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.
- f. Facilities shall be a stealth design, to the maximum extent feasible.
- g. 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.
- h. All accessory equipment associated with the operation of a 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.
- i. No wireless telecommunication facility shall be placed within 50 feet horizontally and vertically of a Significant Ridgeline, as mapped in the General Plan.
- j. Facilities shall comply with the development standards of the underlying zoning district the subject site is located within.
- k. 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 (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 stealth facility mounted on an existing structure or collocated on an existing tower;
 - 2. A stealth facility mounted on an existing steel or concrete pole, including a light standard;

3. A stealth facility mounted on a new structure architecturally compatible with the surrounding area; or
4. A stealth facility mounted on a new steel, wood or concrete pole.

B. Conditions of Approval for all new or modified wireless facilities.

1. Conditions of approval for new or modified wireless telecommunication facilities located within the public right-of-way.

- a. Any approved wireless telecommunication 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 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.

- d. 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.
- e. 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.
- f. Removal of Unsafe Facilities. If, at any time after the issuance of a building permit or encroachment permit, any wireless telecommunication facility becomes incompatible with public health or safety, 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.
- g. The owner or operator of any wireless telecommunication facility approved by a Tier 1 or Tier 2 Wireless Telecommunication Facility Permit under this subsection (A) of this Section 17.31.030 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 17.31 of the Calabasas Municipal Code.
- h. Prior to the issuance of a building permit or encroachment permit for a new facility, 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.)

- i. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless telecommunication facility.
- j. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.
- k. A wireless telecommunication facility approved by a Tier 2 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.
- l. 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

2. Conditions of approval for all new or modified wireless telecommunication facilities not located within the public right-of-way.
 - 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. 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.
 - c. The owner or operator of any wireless telecommunication facility approved by a Tier 1 or Tier 2 Wireless Telecommunication Facility Permit under this subsection (A) of this Section 17.31.030 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 17.31 of the Calabasas Municipal Code.
 - d. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a personal wireless telecommunication facility.
 - e. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.

f. Abandonment:

1. 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. Independent Expert Review. The city may retain one (1) or more independent, qualified consultants to review any application for a Tier 1 and Tier 2 Wireless Facility Permit, 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 may address any or all of the following, as applicable:

1. For Tier 2 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;
2. The accuracy and completeness of submissions;
3. For Tier 2 Wireless Facility Permits, technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
4. The applicability of analysis techniques and methodologies;
5. For Tier 2 Wireless Facility Permits, the viability of alternative sites and alternative designs; and
6. For all 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
7. 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.

- D. Construction. These standards are intended to exert the maximum authority available to the city in the regulation of 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 Chapter (17.31) is to regulate 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.
- E. Standards for all wireless facilities
- All facilities shall be stealth to the maximum extent feasible.
- F. Violations. The city may revoke a permit for any 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 (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- G. Allowed locations

The following table identifies the allowed zoning districts and locations for wireless telecommunication facilities based on permit type, subject to the limitations and requirements of this Chapter 17.31 and other applicable law:

	Table 17.31.1														
	RS	RC	CR	CMU	CB	CO	CL	CT	OS	PF	REC	PD	Arterial Roads	Collector Streets	Local Streets (PROW Only)
Tier 1	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Tier 2			x	x	x	x	x	x		x		x	x		<u>x</u>
Small Wireless Facility Permit				x	x	x	x	x		x			x	<u>x</u>	<u>x</u>

Wireless facilities are not permitted in any other zone not listed in Table 17.31.1. Tier 2 and Small Wireless Facility Permits are not permitted on any privately owned roads or streets rights-of-way.

17.31.040 – Tier 1 Wireless Telecommunication Facility Permit

- A. Purpose. The purpose of this section is to encourage the deployment of stealth wireless facilities in appropriate areas of the City, in order to provide safe and reliable wireless service to the community.
- B. Applicability. An applicant seeking approval of a collocation or modification to an existing structure or wireless facility, or deployment of a new wireless facility, which complies with the standards in Section 17.31.030 and Section 17.31.040(C), shall apply for a Tier 1 Wireless Facility Permit and any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit. An applicant seeking approval of a subsequent proposed modification of an existing wireless facility, which complies with the standards in Section 17.31.030 and Section 17.31.040(C), shall also apply for a Tier 1 Wireless Facility Permit and any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.
- C. Standards. Wireless telecommunication facilities subject to a Tier 1 Wireless Telecommunication Facility Permit shall be subject to the following standards:

1. Wireless telecommunication facilities located within the public right-of-way or privately owned "right-of-ways" located within a common interest development.
 - a. Tier 1 wireless telecommunication facilities shall comply with standards set forth in Section 17.31.030.
 - b. Tier 1 wireless telecommunication facilities are allowed on arterial and collector roads identified in the Circulation Element of the General Plan, including privately owned "right-of-ways" located within a common interest development as defined by Civil Code section 4100.
 - c. Ground mounted equipment, antennas and structures shall comply with the height and size limits established in Section 17.31.030.
 - d. New wireless telecommunication facilities shall be co-located on an existing structure or replacement structure of similar size and location, or if no existing or replacement structure is feasible, may be located on a new light standard, utility pole, or similar structure.
 - e. All equipment (except any required utility meter cabinet) shall be located underground or pole mounted.
 - f. All facilities shall meet the stealth design criteria established by the City's Wireless Telecommunication Facility Design Guidelines.
2. Wireless telecommunication facilities not located within the public right-of-way.
 - a. Wireless telecommunication facilities shall comply with standards set forth in Section 17.31.030.
 - b. Tier 1 wireless telecommunication facilities are allowed in all Commercial Zones, and the PF, REC, OS, PD, RC, and RS zones. A wireless facility is only allowed in the REC, OS, RC, and RS zones if it is located on a parcel that is developed with a street or structure, under government ownership or common ownership by a common interest development as defined by Civil Code section 4100, and not dedicated for open space or development restricted.
 - c. The height of a wireless telecommunication facility shall comply with the height limit established by the underlying zoning district. Height exceptions may be allowed for antennas completely screened and located within an architectural feature consistent with Section 17.20.140.
 - d. Wireless telecommunication facilities shall comply with the setbacks established by the underlying zoning district and Section 17.31.030.
 - e. New wireless telecommunication facilities shall be co-located on an existing structure or replacement structure of similar size and location,

or if no existing or replacement structure is feasible, may be located on a new light standard, utility pole, or other structure.

- f. All facilities shall meet the stealth design criteria established by the City's Wireless Telecommunication Facility Design Guidelines.

D. Application content. Applications for the approval of a Tier 1 Wireless Telecommunication Facility Permit 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 pursuant to Chapter 17.60 of this title:

1. Application Forms. The city's standard application form, available on the city's website or from the community development department, as may be amended by the community development director;
2. Application Fee. An application fee as established by the council by resolution under the authority of Section 17.60.040;
3. 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;
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect;
5. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless facility complies with all applicable building codes;
6. Noise Study. A noise study or written statement, prepared by a qualified engineer, for the proposed 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);
7. Site Survey. For any new wireless telecommunication facilities 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 within two hundred fifty (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;

8. 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;
 9. 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;
 10. 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";
 11. Other Information. Such other information as the city may require, as specified in publically available materials, including information required as stated on the city's website.
- E. Application review. Each application for a Tier 1 Wireless Telecommunication Facility Permit shall be reviewed by the Director. Any application that is determined to be incomplete, and is not subsequently modified to be complete in the judgment of the Director under applicable law within 30 days after the City's notification to the applicant that the application is incomplete, shall be deemed withdrawn.
- F. Findings. The Director may approve a Tier 1 Wireless Telecommunication Facility Permit only if each of the following findings can be made:
1. The proposed wireless telecommunication facility meets the standards set forth in Sections 17.31.030 and 17.31.040.
 2. The proposed wireless telecommunication facility is designed as a stealth facility consistent with the City's Design Guidelines for Tier 1 wireless telecommunication facilities.

G. Conditions of Approval. 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 Tier 1 Wireless Telecommunication Facility Permits under this subsection, shall include the following conditions of approval:

1. 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.
2. 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.
3. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] 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 [the] 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.
4. 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.
5. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
6. Violations. The 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 (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

H. Denial without prejudice

1. Grounds for denial without prejudice. The director may deny without prejudice an application for a Tier 1 Wireless Telecommunication Facility Permit in any of the following circumstances:
 - a. The director cannot make all findings required for approval of a Tier 1 wireless telecommunication facility permit; or
 - b. The proposed permit would cause the violation of an objective, generally applicable law protecting public health or safety.
2. Procedures For Denial Without Prejudice. All Tier 1 Wireless Telecommunication 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.
3. Submittal After Denial Without Prejudice. After the director denies a Tier 1 Wireless Telecommunication Facility Permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - a. Submit a new wireless facility permit application for the same or substantially the same proposed facility; or
 - c. Submit an appeal of the director's decision.
4. Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any wireless facility permit application. In the event that the director denies a 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 wireless facility permit application or submit a wireless facility permit application for the same or substantially the same proposed facility unless all costs for the previously denied permit application are paid in full.

17.31.050 – Tier 2 Wireless Telecommunication Facility Permit

- A. Purpose. This section is intended to comply with the city's obligations under federal law to ensure that wireless providers are not prohibited from providing wireless service within the City of Calabasas.
- B. Applicability. All new wireless telecommunication facilities or modifications to an existing wireless telecommunications facility, however originally approved, that do not meet the findings of approval required for a Tier 1 Wireless Telecommunication Facility Permit as specified in Section 17.31.040(F), Wireless Facility Minor Modification Permit as specified in Section 17.31.060(E), or a small wireless facility permit as specified in Section 17.31.070(G), shall be subject to the approval of (i) a Tier 2 Wireless Telecommunication 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.
- C. Standards. Wireless telecommunication facilities subject to a Tier 2 Wireless Telecommunication Facility Permit shall be subject to the following standards:
1. Facilities shall comply with the standards set forth in section 17.31.030.
 2. New Wireless Facility Preferred Zones and Locations - When doing so would not conflict with one (1) of the standards set forth in Section 17.31.030 or with federal law, wireless telecommunication facilities subject to the approval of a Tier 2 Wireless Telecommunication Facility Permit shall be located in the most appropriate location as described in this subsection (2), which range from the most appropriate to the least appropriate. Nothing in this section shall detract from the requirements of Section 17.31.050(C)3 below.
 - a. Collocation on an existing facility in a commercial zone;
 - b. Collocation on an existing structure or utility pole in a commercial zone;
 - c. Location on a new structure in a commercial zone;
 - d. Collocation on an existing facility in a public facility or recreation zone;
 - e. Location on an existing structure or utility pole in a public facility or recreation zone; or
 - f. 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.

3. All new wireless telecommunication facilities subject to a Tier 2 Wireless Telecommunication Facility Permit, 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 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.
4. Prohibited Locations - No Tier 2 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:
 - a. Ridgelines. No personal wireless telecommunication facility shall be placed on or near a ridgeline.
 - b. Residential Zones. No facility shall be located within a residential zone, including areas set aside for open space, parks or playgrounds.
 - c. Open Space. No facility shall be located within an open space zone or park.

Notwithstanding this subsection, wireless telecommunication facilities subject to the approval of a Tier 2 Wireless Telecommunication Facility Permit may be permitted in a prohibited location only if the applicant obtains a Tier 2 Wireless Telecommunication 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

- D. Application content. Applications for the approval of a Tier 2 Wireless Telecommunication Facility Permit 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 pursuant to Chapter 17.60 of this title:

1. Application Forms. The city's standard application form, available on the city's website or from the community development department, as may be amended by the community development director;
2. Application Fee. An application fee as established by the council by resolution under the authority of Section 17.60.040;
3. 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;
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect;
5. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless facility complies with all applicable building codes;
6. Site Survey. For any new wireless facilities 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 within two hundred fifty (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;
7. 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;
8. 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;
9. 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";

10. Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of this Section 17.31.050;
11. 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;
12. 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 (2) 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 (2) 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 (2) 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;
13. A siting analysis which identifies a minimum of five (5) 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 (1) collocation site;
14. 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;
15. 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

16. 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.
 17. 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.
- E. Application review. Applications for Tier 2 Wireless Telecommunication Facility Permits shall be first reviewed by the development review committee. All applications for Tier 2 Wireless Telecommunication Facility Permits will be scheduled for a public hearing before the commission in accordance with Section 17.31.050(I) 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. Any application that is determined to be incomplete, and is not subsequently modified to be complete in the judgment of the Director under applicable law within 30 days after the City's notification to the applicant that the application is incomplete, shall be deemed withdrawn.
- F. Tier 2 Wireless telecommunication Facility Permit Findings. In addition to the findings required in Section 17.62.060 of this Code, no Tier 2 Wireless telecommunication Facility Permit may be approved unless the commission or council finds as follows:
1. 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.
 2. 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 Chapter 17.31 of the Calabasas Municipal Code.
 3. The facility satisfies the location requirements of Section 17.31.050(C)(2) of the Calabasas Municipal Code.
- G. Conditions of Approval. In addition to the conditions of approval in Section 17.31.020, all new wireless facilities subject to a Tier 2 Wireless Facility Permit shall be subject to the following condition(s):

1. A new wireless telecommunication facility approved by a Tier 2 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.

H. Denial without prejudice

1. Grounds for denial without prejudice. The director may deny without prejudice an application for a wireless facility minor modification permit in any of the following circumstances:
 - a. The director cannot make all findings required for approval of a wireless facility minor modification permit;
 - b. The proposed collocation or modification would cause the violation of an objective, generally applicable law protecting public health or safety; or
 - c. The proposed collocation or modification involves the removal and replacement of the facility's entire supporting structure.
2. Procedures For Denial Without Prejudice. All wireless facility minor modification 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.
3. Submittal After Denial Without Prejudice. After the director denies a wireless facility minor modification permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - a. Submit a new wireless facility minor modification permit application for the same or substantially the same proposed collocation or modification;
 - b. Submit a new wireless facility permit application for the same or substantially the same proposed collocation or modification; or
 - c. Submit an appeal of the director's decision.
4. Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any wireless facility minor modification permit application. In the event that the director denies a wireless facility minor modification 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 wireless facility

permit application or submit a wireless facility minor modification permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

- I. Additional Notice to Neighbors. After an application for a Tier 2 Wireless Telecommunication Facility Permit is complete, the city shall endeavor to provide property owners at least thirty (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 one thousand five hundred (1,500) feet of the proposed site.

A public hearing may be set on less than thirty (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) and Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this section, adopted on December 17, 2014, and codified at 47 C.F.R. §§ 1.40001, et seq., as they now exist or may hereafter be amended.

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

17.31.060 – Wireless Telecommunication Facility Minor Modification Permit

Requirements for Personal Wireless Telecommunications Facilities Subject to a Wireless Facility Minor Modification Permit. This subsection governs applications for certain modifications to existing personal wireless telecommunications facilities, as specified.

- A. Purpose. This Section is intended to comply with the city's obligations under federal law, 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), adopted as Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This Section creates a process for the city to review an application for a Wireless Facility Minor Modification Permit submitted by an applicant who asserts that a proposed collocation or modification to an existing wireless telecommunications facility is covered by this federal law and to determine whether the city must approve the proposed collocation or modification. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations

implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. Consistent with section 17.31.010(A)(5), this subsection is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the federal Telecommunications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable Federal Communications Commission regulations and court decisions considering these laws and regulations.

- B. **Applicability.** An applicant seeking approval of a collocation or modification to an existing wireless telecommunication facility 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 Wireless Facility Minor Modification Permit, in addition to (ii) an encroachment permit from the public works department (if the 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.
- C. **Application content.** All applications for a wireless facility minor modification permit must include the following items.
 - 1. **Application Form.** The city's standard application form, available on the city's website or from the community development department, as may be amended.
 - 2. **Application Fee.** An application fee as established by the council by resolution under the authority of Section 17.60.040.
 - 3. **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.
 - 4. **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.
 - a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. 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.
 - e. For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four (4) elevations that

depict the physical dimensions of the wireless tower as it existed on February 22, 2012, or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the base station as it existed on February 22, 2012, or as approved if constructed after February 22, 2012.

5. Visual Simulations. A visual analysis that includes (i) 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; (ii) a color and finished material palate for proposed screening materials; and (iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
6. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an "eligible facilities request" and does not result in a substantial change in the physical dimensions of the facility's wireless tower or base station, as defined by Section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit under Section 17.31.060(E) and explain the facts that justify the request for the director to make each finding.
7. 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 regulations implementing this federal law.
8. 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".

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless telecommunications facility complies with all applicable building codes.
 10. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed personal wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.
 11. Other Permits. An application for a wireless facility minor modification 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 modification to an existing personal wireless telecommunications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).
 12. Other Information. Such other information as the city may require, as specified in publically available materials, including information required as stated on the city's website.
- D. Application Review, Notice, and Hearing. Each application for a wireless facility minor modification permit shall be reviewed by the director at a public hearing. Notice of the public hearing shall be provided in accord with Chapter 17.78, except that written notice shall be mailed to the record owner of each property within three hundred (300) feet of the site of the proposed modification. Under federal law, the city must approve or deny an application for a wireless facility minor modification permit, together with any other city permits required for a proposed wireless facility modification, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility minor modification permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law. Any application that is determined to be incomplete, and is not subsequently modified to be complete in the judgment of the Director under applicable law within 30 days after the City's notification to the applicant that the application is incomplete, shall be deemed withdrawn.
- E. Findings Required for Approval by Director at Public Hearing

1. Facilities not located within the public right-of-way. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower on private property only if each of the following findings can be made:
 - a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities;
 - b. The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;
 - d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
 - e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;
 - f. The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and
 - g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).
2. Facilities located within the public right-of-way. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing base station on private property only if each of the following findings can be made:
 - a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;

- b. The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or ten (10) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;
 - d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
 - e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;
 - f. The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and
 - g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).
3. Base station located within the public right-of-way. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower or base station in the public right-of-way only if each of the following findings can be made:
- a. The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
 - b. The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or ten (10) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;

- d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
- e. The proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten (10) percent larger in height or overall volume than any existing ground cabinets;
- f. The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right-of-way;
- g. The proposed collocation or modification does not defeat any existing concealment elements of the existing structure; and
- h. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).

F. Conditions of Approval for Wireless Facility Minor Modification 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 wireless facility minor modification permits under this subsection, whether approved by the director or deemed granted by the operation of law, shall include the following conditions of approval:

- 1. No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
- 2. Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by Section 6409, subdivision (a).
- 3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless telecommunications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- 4. 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 wireless facility minor modification 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.

5. 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.
6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
7. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification 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 wireless facility minor modification 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 (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
8. 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 modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
9. The grant, deemed-grant or acceptance of wireless facility minor modification 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 wireless

facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

G. Wireless Facility Minor Modification Permit Denial Without Prejudice.

1. Grounds for denial without prejudice. The director may deny without prejudice an application for a wireless facility minor modification permit in any of the following circumstances;
 - a. The director cannot make all findings required for approval of a wireless facility minor modification permit;
 - b. The proposed collocation or modification would cause the violation of an objective, generally applicable law protecting public health or safety;
 - c. The proposed collocation or modification involves the removal and replacement of the facility's entire supporting structure; or
 - d. The proposed collocation modification 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.
2. Procedures For Denial Without Prejudice. All wireless facility minor modification 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.
3. Submittal After Denial Without Prejudice. After the director denies a wireless facility minor modification permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - a. Submit a new wireless facility minor modification permit application for the same or substantially the same proposed collocation or modification;
 - b. Submit a new wireless facility permit application for the same or substantially the same proposed collocation or modification; or
 - c. Submit an appeal of the director's decision.
4. Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any wireless facility minor modification permit application. In the event that the director denies a wireless facility minor modification 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 wireless facility permit application or submit a wireless facility minor modification permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

17.31.070 – Small Wireless Telecommunication Facility Permit

This subsection governs applications for small wireless facilities permits.

- A. Purpose. This Section 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.
- B. 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.
- C. Application content. All applications for a small wireless facility permit must include the following items:
 - 1. Application Forms. The city's standard application form, available on the city's website or from the community development department, as may be amended by the community development director.
 - 2. An application fee as established by the council by resolution under the authority of Section 17.60.040.
 - 3. 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.
 - 4. 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.

- a. A site plan and elevation drawings for the facility as existing and as proposed with all height, depth, and width measurements explicitly stated.
 - b. A depiction, with height, depth, and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. 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.
 - e. All four (4) elevations that depict the physical dimensions of the wireless tower or support structure and all transmission equipment, antennas and attachments.
 - f. A demolition plan.
5. Visual Simulations. A visual analysis that includes (i) 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; (ii) a color and finished material palate for proposed screening materials; and (iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
 6. 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.
 7. 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.
 8. 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".

9. 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.
 10. Noise Study. A noise study or written statement, 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 17.31.030.
 11. Site Survey. For any new 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 two hundred fifty (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.
 12. 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).
- D. 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. At the time an application is deemed complete, the director shall provide

written notice to all property owners within three hundred (300) feet of the site of a proposed small wireless facility.

Applicants may submit up to five (5) 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. Any application that is determined to be incomplete, and is not subsequently modified to be complete in the judgment of the Director under applicable law within 30 days after the City's notification to the applicant that the application is incomplete, shall be deemed withdrawn.

- E. 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 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.
- F. Standards Governing Approval by the Director. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards in addition to the standards set forth in section 17.31.030:
 - 1. The existing structure was constructed and maintained with all necessary permits in good standing.
 - 2. 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.
 - 3. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.

4. 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 twenty-eight (28) cubic feet in volume.
 5. 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.
 6. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 7. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
 8. The proposed collocation is consistent with the allowed locations in Table 17.31.1 of Section 17.31.030.
 9. The proposed collocation is consistent with the design and development standards of subsection 17.31.030.
 10. The proposed collocation is consistent with the independent expert review provisions of subsection 17.31.030(C).
 11. The proposed collocation is consistent with the conditions of approval provisions of subsection 17.31.030.
 12. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of subsection 17.31.030(A)(2).
 13. For collocation located within the public right-of-way, the proposed collocation shall be consistent with subsection 17.31.030(A)(1).
 14. The proposed collocation would be in the most preferred location and configuration within two hundred fifty (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 two hundred fifty (250) feet would be technically infeasible, applying the preference standards of this section.
 15. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- G. Findings. The director may approve an application for a small wireless facility permit only if each of the following findings can be made:
1. The proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 2. The proposed project would be in the most preferred location as identified in Section 17.31.050(C)(2) within two hundred fifty (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 two hundred fifty (250) feet would be technically infeasible;
3. The proposed project complies with the standards for a small wireless facility as specified in Section 17.31.070(F)
 4. For proposed project not located within the public right-of-way, the proposed project complies with subsection 17.31.030(A)(2).
 5. For proposed projects located within the public right-of-way, the proposed project complies with subsection 17.31.030(A)(1).
 6. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- H. 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:
1. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
 2. 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.
 3. 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.
 4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] 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 [the] 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.

5. 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.
6. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
7. 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 (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
8. 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.
9. 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.

I. Small Wireless Facility Permit Denial Without Prejudice

1. 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:

- a. The director cannot make all findings required for approval of a small wireless facility permit;
 - b. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
 - c. The proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
 - d. 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.
2. 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.
 3. 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:
 - a. Submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
 - b. Submit a new wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - c. Submit an appeal of the director's decision.
 4. 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.

17.31.080 - Communications and Technology Commission as Planning Commission for Specified Purposes.

For purposes of approvals required by this Chapter 17.31 and any other entitlement under this Code required only because the application seeks to construct or operate a personal wireless telecommunication 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 personal wireless telecommunication facility and (ii) for the construction and operation of a personal wireless telecommunication 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 personal wireless telecommunication facility. 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 Chapter 17.31. Any appeal of a decision by the Director related to a permit application under this Chapter 17.31 shall be heard by the Communications and Technology Commission, subject to further appeal to the City Council, under the requirements of Chapter 17.74.

17.31.090 - Private Enforcement.

In addition to any other remedy available to the city under this Code, at law or in equity, violations of this Chapter 17.31 may be remedied as follows:

- A. 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.
- B. Private Enforcement. In addition to any other remedy available to the city under this Code, at law or in equity, violations of this Chapter 17.31 may be remedied as follows:
 1. 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.
 2. 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.
- C. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.

- D. 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.
- E. Upon proof of a violation of this section, the court shall award the following:
1. Appropriate injunctive relief and damages in the amount of either:
 - a. Upon proof, actual damages;
 - b. With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) 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.
 2. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
 3. 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.
 4. 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.
- F. 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.
- G. 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.

H. 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.

17.31.100 - 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 Chapter 17.31 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 and 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 17.31.090.

"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 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. All equipment shall be placed underground or pole mounted to the maximum extent feasible. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible. Only non-functional, screening material equivalent in appearance to the existing, underlying building, light standard, or other structure may be visible.

"Tier 1 Wireless Telecommunication 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 Chapter.

"Tier 2 Wireless Telecommunication 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 Chapter (including, but not limited to, those of Section 17.62.060 for a conditional use permit).

"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 17.31.060.

"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.