



# City of San Clemente Planning Division

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## **SMALL WIRELESS FACILITY DRAFT ORDINANCE PACKET**

### **This Packet Includes Drafts of the Following Documents:**

- **Small Wireless Facility Ordinance:** to be adopted by the City Council by Ordinance, amending sections of Title 17 (Zoning) of the San Clemente Municipal Code to address changes to federal regulations relating to the City's review of small wireless facilities.
- **Design and Development Standards for Small Wireless Facilities:** to be adopted by Resolution of the City Council and incorporated into the Ordinance by reference, new standards to be applied to small wireless facilities with respect to design and placement.
- **Standard Conditions of Approval:** to be applied to all Wireless Permits approved by the City pursuant to the Small Cell Ordinance, as applicable.

### **Process for Adoption:**

- **Public Review:** This packet is available for public review and comment and was posted to the City's website on November 8, 2019. Comments and questions can be forwarded to Katie Crockett for consideration for incorporation into the ordinance or other associated documents.
- **Public Workshop:** To be held November 20, 2019 from 5:00 p.m. to 7:00 p.m. at the City Council Chambers. Presentations will be made going over key elements of the draft Ordinance and Design Standards. Time will be reserved to field questions and hear comments. Because we are limited on time speakers will be limited to 2-3 minutes (depending on the number in attendance wishing to speak or ask questions). Again written comments and questions are encouraged ahead of the hearing as this will enable staff to tailor the presentation portion of the meeting to address areas of concern and interest, and make the best use of the time available. The Workshop will be recorded and available online following the Workshop.
- **Public Hearings:** Following the Workshop, staff will make any necessary modifications to the documents and prepare them for review by the Planning Commission at a noticed Public Hearing. The Public Hearing will be advertised in the San Clemente Times, and all individuals who have registered their email address on the interest list (please email Katie Crockett to be added to the interest list) will also receive email notice of the Hearing. The Planning Commission will make a recommendation to the City Council, who will hear the issue at a subsequent City Council Public Hearing, noticed in the same manner as the Planning Commission Public Hearing.

## ORDINANCE NO.

### AN ORDINANCE OF CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 17.88, 17.28, 17.16, AND 17.12 FOR SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

**WHEREAS**, the City of San Clemente, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California;

**WHEREAS**, by virtue of the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens;

**WHEREAS**, since the City Council last amended Chapters 17.88, 17.28, 17.16, and 17.12, significant changes in federal laws that affect local authority over wireless telecommunication facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:

- On August 2, 2018, the Federal Communications Commission (“FCC”) adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, created new shorter “shot clocks” for small wireless facilities (as defined in the September Order), altered existing “shot clock” regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities that replaced the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provided that a failure to act within the applicable timeframe presumptively constitutes an

effective prohibition. The September Order was made effective 90 days after publication in the Federal Register, that is, on January 14, 2019;

**WHEREAS**, in light of the FCC Orders, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority;

**WHEREAS**, considering that most portions of the FCC Orders are already in effect, if the City does not immediately amend the San Clemente Municipal Code ("Code"), there is a risk that the City may not be able to enforce provisions of its Code or comply with the new federal regulations;

**WHEREAS**, the City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

**WHEREAS**, if not adequately regulated, the installation of small wireless facilities can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless telecommunications facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless telecommunications facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless telecommunications facilities, including the associated pedestals, meters, equipment and power generators, all of which may negatively impact the City and its citizens; and

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the City Council of the City of San Clemente:

SECTION 1. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. Amendment. The City Code Chapter 17.88 is hereby amended to add the following definitions:

"Eligible Facilities Request. Has meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision."

"Small Cell Facility. Has the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services

facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b)."

"Wireless Telecommunications Facility. The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s)."

SECTION 5. Amendments to the San Clemente Municipal Code Chapter 17.28. The San Clemente Municipal Code Section 17.28.240 is hereby amended as set forth in Exhibit A, attached hereto.

SECTION 6. Amendments to the San Clemente Municipal Code Chapter 17.16. The San Clemente Municipal Code Chapter 17.16 is hereby amended to add Section 17.16.075, which is set forth in Exhibit B, attached hereto.

SECTION 7. Amendments to the San Clemente Municipal Code Chapter 17.12. The City San Clemente Municipal Code Chapter 17.12 is hereby amended as set forth in Exhibit C, attached hereto.

SECTION 8. The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 9. **CEQA.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific

development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Orange within five working days of the passage and adoption of the Ordinance.

**SECTION 10. Severability.** If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

**SECTION 11.** In accordance with California Government Code Section 36937(b), this ordinance shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN CLEMENTE this**  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, **by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, **City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
\_\_\_\_\_, **City Attorney**

DRAFT

## Exhibit A

### 17.28.240 - Public Utilities.

- A. **Purpose and Intent** . The purpose of this section is to ensure that public utility facilities, such as substations or reservoirs, and antennas (other than satellite antennas and antennas on City property, which are regulated elsewhere) are located and built in a manner which is compatible with adjacent uses. An additional purpose of this section is to define the review process for public utilities initiated by the City and those initiated by outside agencies. Please refer to Section 17.28.070, Antennas on City Property, and Section 17.28.080, Satellite Antennas, for regulations for other types of antennas.
- B. **Review Requirements** .
1. City Projects. For the required review process for City-initiated public utility projects, please refer to the City's Public Works Department policy on the review of capital improvement projects.
  2. Projects Initiated by Outside Agencies/Applicants.
    - a. Major utilities shall require the approval of a Conditional Use Permit, in accordance with Section 17.16.060, Conditional Use Permits. Major utilities shall include, but shall not be limited to, reservoirs, utility substations, including electrical distribution and transmission substations, and above-ground pump stations, such as sewage and potable water system pump stations, antennas (other than satellite antennas, ~~and~~ antennas on City property, and small cell facilities) and similar facilities. If the installation of the antenna is stealth, as determined by the City Planner, then the process is administrative and no Conditional Use Permit is required. The standards in Subsection (C)(1), Minimum Standards for Projects Initiated by Outside Agencies, Major Utilities, shall apply to major utilities initiated by outside agencies. The City Engineer shall be responsible for determining whether a utility is major.
    - b. Minor utilities shall be permitted outright, subject to the concurrent review requirements found in Section 17.12.090, Consideration of Concurrent Applications. Minor utilities shall include, but shall not be limited to, below-ground pump stations, stand pipes, and transformers. The standards in Subsection (C)(2), Minimum Standards for Projects Initiated by Outside Agencies, Minor Utilities, shall apply to minor utilities initiated by outside agencies. The City Engineer shall be responsible for determining whether a utility is minor.
    - c. Public utility distribution and transmission line towers and poles, and underground facilities for distribution of gas, water, telephone and electricity shall be allowed in all zones without obtaining a Conditional Use Permit. However, all routes and heights of proposed electric transmission systems of 69 KV and over, telephone main trunk cables, from one central office to another and water or gas transmission mains which are above ground, shall be located in conformance with the General Plan of the City.
    - d. Small cell facilities shall require the approval of a Wireless Permit in accordance with Section 17.16.075.
  3. Modifications to Existing Antenna Facilities. The City Planner shall review and decide on requests to modify existing wireless towers or base station structures that support antennas, transceivers, or other related equipment. This includes the addition and removal of wireless transmission equipment such as the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment. Modifications shall not substantially change the physical dimensions of the wireless tower or base station, as defined by the Federal Communications Commission. The City Planner may approve projects that meet minimum standards in Section 17.28.070(D)(5).
- C. **Minimum Standards for Projects initiated by Outside Agencies.**
1. Major Utilities.

- a. Compatibility. All buildings, structures and landscaping shall be visually compatible with surrounding development.
  - b. Development Standards. The standards for major utilities shall be determined through the Conditional Use Permit process.
  - c. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards through 17.48, Public Zones and Standards.
2. Minor Utilities.
- a. Compatibility. All minor utilities shall be placed underground or shall be screened in accordance with Section 17.24.050, Building Equipment and Services and Their Screening.
  - b. Development Standards. Minor utilities shall comply with the standards for ground-mounted equipment in Section 17.24.050, Building Equipment and Services and Their Screening.
  - c. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards through 17.48, Public Zones and Standards.
  - d. Parking. The parking requirements for a public utility use such as an electric distribution and transmission substation, public utility service yard or similar use may be waived or modified, subject to the approval of a Conditional Use Permit in accordance with Section 17.16.060, Conditional Use Permits, upon a finding that the use requires no full-time or permanent employees.
3. Modifications of Existing Wireless Towers or Base Station Structures. Refer to Section 17.28.070(D)(5) for minimum standards that apply to modifications of existing wireless towers or base station structures.

4. Small Cell Facilities.

- a. Design and Development Standards. The design and development standards, which contain aesthetic and location criteria for small cell facilities shall be adopted by Resolution of the City Council.

(Ord. 1304 § 21, 2005; Ord. 1172 § 3 (part), 1996)

(Ord. No. 1594, § 3(Exh. A, § 30), 5-5-2015)



## **Exhibit B**

### **17.16.075 – Wireless Permits.**

**A. Purpose and Intent.** It is the purpose of this Section to establish a process for managing, and uniform standards for acting upon, requests for the placement of Small Cell Facilities consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incomed by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities in its right-of-way, in public easements, and on private streets. This ordinance shall be interpreted consistent with those provisions.

### **B. Authority.**

1. The City Planner is the reviewing authority for applications to install or modify wireless facilities in the right-of-way, in public easements, and on private streets. The City Planner shall make decisions on such applications and has the authority to, among all other actions related to the processing of applications, issue application forms and materials and issue conditions of approval for a wireless permit. If the City Planner determines that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, then the applicable requirements of this Code and any related design and development standards may be waived, but only to the minimum extent required to avoid the prohibition or violation.
2. Any person may appeal the City Planner's decision to the Community Development Director. All appeals must be filed within two (2) business days of the written decision of the City Planner, unless the Community Development Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law. The appeal must be filed with a short and plain statement about the basis for the appeal, which may be supplemented after the appeal period has expired but before the appeal decision. Appeals of an approval shall not be permitted when based solely on the environmental effects from radiofrequency emissions that are compliant with applicable FCC regulations and guidelines. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility. The Community Development Director may decide the issues *de novo*; and the Director's written decision will be the final decision of the City. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

### **C. Applicability.**

1. In general. There shall be a type of permit entitled a "Wireless Permit," which shall be subject to all of the requirements of this Section and other applicable portions of the Code. Unless exempted, every person who desires to place a small cell facility must obtain a wireless permit authorizing the placement or modification in accordance with this Code. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Section.
2. Exemptions. This Section does not apply to: (a) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes; or (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
3. Other applicable requirements. In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the right-of-way requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with

applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.

**D. Application Filing.** Applicant shall submit in person a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to: City of San Clemente City Planner, at 910 Calle Negocio, San Clemente, 92673.

**E. Application Filing, Processing, and Review .**

1. Pre-submission meeting. Prior to filing an application for a wireless permit, an applicant is encouraged to schedule a pre-application meeting with the City Planner to discuss the proposed facility, the requirements of this Code, and any potential impacts of the proposed facility.
2. Application Content. An applicant shall submit an application on the form approved by the City Planner, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City Planner to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information necessary to show that applicant is entitled to the wireless permit requested, and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.
3. Incompleteness. Wireless permit applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the City Planner shall notify the applicant in writing specifying the required material omitted from the application
4. Public Hearing, Notice, and Appeal Provisions.
  - a. There are no public hearings for applications for wireless permits.
  - b. Notice of the date a decision will be rendered by the reviewing authority will be mailed by the City at least 10 days in advance of the decision date to all property owners within 300 feet of the subject site. Decisions will be posted on the City's website the date the decision is rendered. Notices pursuant to this section shall be provided both for the decision on an application as well as any appeal decision.
  - c. The reviewing authority's decision may be appealed per Section 17.16.075(B)(2).

**F. Required Findings; Decisions; Consultants.**

1. Findings Required for Approval.
  - a. Except for eligible facilities requests, the City Planner or Community Development Director, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
    - i. The facility is not detrimental to the public health, safety, and welfare;
    - ii. The facility complies with this Article and all applicable design and development standards; and
    - iii. The facility meets applicable requirements and standards of state and federal law
  - b. For eligible facilities requests, the City Planner or Community Development Director, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
    - i. That the application qualifies as an eligible facilities request; and
    - ii. That the proposed facility will comply with all generally-applicable laws.

- c. For requests for exceptions to the small cell Design and Development Standards, the City Planner or Community Development Director, as the case may be, shall approve a request for exception if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
- i. A denial of the facility based on the application's noncompliance with a specific provision or requirement would violate state law, federal law, or both; or a provision in this title or the Design and Development Standards, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law; and
- ii. That the request for exception deviates from these Standards to the least extent necessary for compliance with federal or state law or both (i.e. there are no viable, technically feasible, and aesthetically equivalent or superior alternatives that meet the Design and Development Standards.
2. Decisions. Decisions on an application by the City Planner or Community Development Director shall be in writing and include the reasons for the decision.
3. Independent Consultants. The City Planner or Community Development Director, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Article. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.
- H. **Conditions of Approval.** The City Planner or Community Development Director, as the case may be, shall impose conditions on all permits granted pursuant to this Section. A list of standard conditions for wireless permit approvals is maintained by and available from the Planning Division.

### **Exhibit C**

**Amendment.** Add a row to Table 17.12.020, as is shown below:

<b>Permit Application</b>	<b>Final Authority</b>	<b>Public Hearings</b>
<u>Wireless Permit</u>	<u>City Planner</u>	<u>No</u>

17.12.140 - Appeals of an Action.

#### **A. Appeals by the Public.**

1. Right to Appeal.
  - a. Decisions of the Community Development Director or City Planner. Any person may appeal a decision of the Community Development Director and/or City Planner, except for a decision on a Wireless Permit, to the Planning Commission. The Planning Commission's decision may be appealed to the City Council, whose decision shall be final. Appeals of decisions of the City Planner on Wireless Permits are governed by Section 17.16.075(b)(2).
  - b. Decisions of the City Manager on City Antenna Permits. Any person may appeal a decision of the City Manager on City Antenna Permits to the Planning Commission. The Planning Commission's decision may be appealed to the City Council, whose decision shall be final.
  - c. Decisions of the Zoning Administrator, or Planning Commission. Any person may appeal a decision of the Zoning Administrator or Planning Commission to the City Council. The City Council's decision on the appeal shall be final.
2. Time Limits for Filing an Appeal.
  - a. Decisions of the Community Development Director or City Planner. Except for appeals on Wireless Permit decisions, An appeal of a decision made by the Community Development Director or City Planner shall be filed with the Planning Division within 10 consecutive calendar days following the decision sought to be appealed. Appeals of decisions of the City Planner on Wireless Permits are governed by Section 17.16.075(b)(2).
  - b. Decisions of the City Manager on City Antenna Permits. An appeal of a decision made by the City Manager on a City Antenna Permit shall be filed with the Planning Division within 10 consecutive calendar days following the decision sought to be appealed.
  - c. Decisions of the Zoning Administrator or Planning Commission. An appeal of the decision of the Zoning Administrator, or Planning Commission shall be filed in the office of the City Clerk or with the City Planner within 10 consecutive calendar days following the decision sought to be appealed.
  - d. Calculation of the Appeal Period. For the purpose of calculating the appeal period, the first day of the appeal period shall be the day immediately following the day on which the decision occurred. The final day of the appeal period shall be the tenth calendar day following the first day of the appeal period, at 5:00 p.m. If the last day to appeal falls on a holiday or on a Saturday or Sunday, the following business day shall be deemed the last day to appeal.
3. Method of Appeal. Appeals shall be in writing on a form obtained from the Planning Division or City Clerk. The appellant shall State the specific reasons for the appeal. Appeal applications shall include the required fee and public notifications materials. Unless otherwise provided for in Table 17.12.100, Public Hearing Requirements, of this chapter public notification materials shall consist of postage pre-paid envelopes addressed to each person owning property within 300

feet of the property which is the subject of the appeal, as such names appear on the latest County equalized tax assessment role.

**B. Appeals by the City Council.**

1. **Right to Appeal.** The City Council may appeal any decision of the Zoning Administrator or Planning Commission by calling up the decision for consideration by the City Council, in accordance with Subsection (B)(3) of this section.
2. **Time Limits for Appealing a Decision.** An appeal by the City Council shall be made by the time the City Council receives and files the official transmittal of the decision on an application, through minutes, action memorandum or otherwise, by the body having original jurisdiction over the matter.
3. **Method of Appeal.** Appeals by the City Council shall be by a majority vote of the City Council at a regular or adjourned regular City Council meeting.

**C. Public Notice of the Appeal.** Notice of the public hearing on the appeal shall be provided as required in Section 17.12.100, Public Hearing and Notification, of this title. As indicated in Subsection (D) of this section, Time Limit for Hearing an Appeal, stamped envelopes for mailing the public hearing notices shall be provided by the appellant.

**D. Time Limit for Hearing an Appeal.** Public hearings on appeals shall be held within 60 days of the City Clerk or Planning Division's receipt of a completed appeal application. The City Clerk shall notify the applicant, in writing, of the date established for the public hearing within 10 days of receipt of a completed appeal application. The appellant, or applicant if the City Council is the appellant, must provide the City with stamped envelopes for public notification, by 20 days prior to the scheduled hearing on the appeal, or the appeal shall be taken off the City Council's calendar and the appellant shall have waived any and all rights to such appeal.

**E. Scope of Review.** The body hearing the appeal shall not be limited to the issues raised on the appeal, but rather shall be entitled to review new evidence and to consider all elements of the appealed action. At the close of the public hearing on the appeal, the appellate body may reverse, affirm, revise or modify original action on the application being appealed.

**F. Effective Date of Appealed Actions.** Please refer to Section 17.12.130, Effective Date of Decision on an Action, of this chapter, Effective Date of Decision.

(Ord. 1172 § 3 (part), 1996)

**CITY OF SAN CLEMENTE (THE “CITY”)  
DESIGN AND DEVELOPMENT STANDARDS (“STANDARDS”)  
FOR SMALL WIRELESS FACILITIES**

**SECTION 1. PURPOSE.** The purpose of these Design and Development Standards is to establish aesthetic and development criteria for small wireless facilities.

**SECTION 2. AUTHORITY.** Adoption of these Standards and modifications thereof shall be made by resolution of the City Council.

**SECTION 3. DEFINITIONS.** The definitions set forth in Section 17.88 of the Municipal Code are incorporated by reference into these Standards.

**SECTION 4. DESIGN AND DEVELOPMENT STANDARDS FOR ALL FACILITIES.** The following design and development standards shall apply to all small wireless facilities:

**A. Visual Criteria.**

1. Generally. Facilities shall be sited to minimize view impacts to surrounding properties and shall be designed such that the least visible means possible is used.
2. Height. Except as otherwise provided herein, the height of the adjacent zone or 10% taller than the existing support structure or adjacent infrastructure most similar to the support structure if a new support structure is required, whichever is taller.
3. Size.
  - a. The size of all small wireless facilities shall not exceed the definition of “small wireless facility” as defined in the City of San Clemente Municipal Code.
  - b. Unmetered electric service shall be used wherever feasible. When unmetered service is not feasible, the smallest electric meter and disconnect available shall be used, unless placed in an underground vault.
  - c. To maintain visual consistency for various types of small wireless facilities, Section C contains additional size limitations for particular types of small wireless facility installations (e.g. streetlight pole, utility pole, etc.).
4. Stealthing. Wireless facilities shall be stealthed utilizing best design practices of the industry to the extent technically feasible. This includes the use of RF transparent screens; shrouds, undergrounding of meters, vaults, and fans where

technically feasible; use of matching colors/finishes; durable/graffiti-resistant paint; non-reflective materials. Other equipment shall be integrated into the pole or other infrastructure such as in a decorative pole base, undergrounded where technically feasible, or otherwise located and screened to minimize visual impacts. Cabling and wiring shall be run internally within all poles to the maximum extent feasible. Where it is not feasible to run cabling and wiring internally (as in wood utility poles), then all cabling and wiring shall be within a conduit affixed directly to the face of the pole for as long as technically feasible. The conduit and visible cabling shall be painted to match the pole as closely as possible.

**B. Location.**

1. Preferred Locations. The following locations are preferred:
  - a. Placement on existing structures on private property in commercial and industrial zones.
  - b. Mounted on existing or replacement infrastructure such as streetlights and utility poles in the right of way adjacent to commercial and industrial zones.
  - c. New structures on private property in commercial and industrial zones.
  - d. As far from occupiable buildings as possible.
2. Discouraged Locations. Wherever possible, the following locations shall be avoided. If the following locations cannot be avoided, the applicant must request an Exception to the criteria, with justification for why the Exception is needed as required in Section F.
  - a. New poles (i.e. not an existing or replacement lightpole, utility pole, or similar infrastructure) in the right of way.
  - b. Location of antennas directly at window height of adjacent buildings.
  - c. Within 100 feet of a historic property, as designated on the City's list of historic resources, unless the facility is not visible from the right of way directly abutting the historic property.

- d. Strand-mounted facilities.
  - e. Within 300 feet of another existing, approved, or planned (for which application has been made to the City) wireless telecommunications facility, as measured from the antenna structure.
  - f. Within 100 feet of residential property, as measured from the property line.
  - g. Within 500 feet from existing public or private schools, as measured from the property line.
  - h. Any location within a Very High Fire Hazard Severity Zone, as designated by the Orange County Fire Authority.
3. Prohibited locations
- a. In any way that interferes with the use of any public or private right of way, and shall not impeded the flow of vehicular or pedestrian traffic, or impair the primary use and purpose of poles/signs/signals or other infrastructure.
  - b. Within scenic vistas/corridors as defined in the San Clemente General Plan and Coastal Land Use Plan, except when located on existing or replacement infrastructure and where the facility increases the height of the existing infrastructure by no more than 10 percent. An Exception, as prescribed in Section F, is required to place a wireless facility within a scenic vista or corridor in accordance with this section.
  - c. Attached to historic structures, as designated on the City's list of historic resources.
  - d. Generators are not permitted in any public or private right of way.
  - e. Wireless facilities are prohibited on traffic signal poles.
- C. **Preferred Designs/Styles.** Wherever possible, proposed facilities shall comply with the following design standards. Where not possible, the applicant must request an exception to the criteria, with justification for why the exception is needed as required in Section G, Exceptions.



1. Streetlight Poles. For existing, replacement, or new streetlights.
  - a. All antennas and pole-mounted equipment shall be mounted at the top of a pole in a shroud, unless the antenna itself is camouflaged to appear as a part of the pole, then the antenna need not be shrouded. Alternatively, if the volume of pole-mounted equipment is larger than can be accommodated within the shroud at the top of the pole, a decorative pole-base shroud can be used. Equipment “backpacks” are not permitted.
  - b. The diameter of wireless facilities mounted at the top of a lightpole shall be as close to the pole’s diameter as technically feasible, not to exceed 18 inches, unless decorative elements dictate otherwise. The size of a decorative base-shroud shall be as small as technically feasible and the diameter shall not exceed 250% of the pole diameter at the base of the pole and shall not exceed 5 feet in height.
  - c. The maximum height of wireless facilities mounted at the top of a lightpole is 72 inches from the top of the existing pole or the nearest lightpole in the vicinity when no base equipment shroud is proposed. The maximum height of wireless facilities mounted at the top of a lightpole where a base-shroud is used shall be 36 inches from the top of the existing pole or the nearest lightpole in the vicinity.
  - d. Wireless facilities and shrouds shall match the color and appearance of the streetlight pole to reduce visual impacts and shall not contain any reflective finishes.
  - e. New or replacement streetlight poles shall match the design (color, dimensions, height, style, and materials) of the existing poles in the vicinity to the greatest extent feasible. In no case shall the diameter of a new or replacement streetlight pole exceed 18 inches.
2. Utility Poles. For existing and replacement utility poles.
  - a. All antennas and radio relay units (RRUs) shall be mounted at the top of a pole in a shroud, unless the antenna itself is camouflaged to appear as a part of the pole, then the antenna itself need not be shrouded. Alternatively, if the volume of RRUs is larger than can

- be accommodated within the shroud at the top of the pole, stacked RRUs mounted as closely to the pole as possible are permitted.
- b. The wireless facility diameter shall be as close to the pole's diameter as technically feasible.
  - c. The maximum height of utility pole facilities is limited to a 10% increase in the existing pole height, or the minimum required to comply with California Public Utilities Commission (CPUC) General Orders, whichever is greater.
  - d. All installations on utility poles shall fully comply with the CPUC General Orders. None of these standards are meant to conflict with or cause violation of any CPUC General Order.
3. Slimline poles. For locations where existing poles are not available, a new slimline pole to support a wireless facility may be considered, except as noted elsewhere in these Standards.
- a. All antennas, shrouds, RRUs, and conduit shall be incorporated into the pole design. Antennas and equipment shall not be mounted to the side of the pole or on a mid-pole arm.
  - b. Slimline poles shall be designed to resemble existing poles near the subject location, including size, height, color, materials, style, and pole distribution and spacing.
  - c. The height of slimline poles including the antenna and shroud shall be no greater than 35 feet or 10% taller than other similar poles not already containing small wireless facilities in the vicinity, whichever is greater.
4. Building-mounted facilities. For facilities mounted to an existing building.
- a. Building-mounted facilities shall comply with the height limits for the zone, except where this would conflict with applicable state or federal regulation.
  - b. Building-mounted antennas shall be stealthed to the maximum extent feasible. Stealthing techniques could include mounting behind a roff-parapet or other

enclosure, or painting antennas to match the building. Modifications to the facades of buildings in certain zones may require additional discretionary approvals.

- c. Equipment enclosures shall be screened to the greatest extent feasible.
5. Curb Setback Requirements. There are no specific curb setbacks. However, all facilities must maintain minimum sidewalk clearances. Within pedestrian districts (as designated within Specific Plans or overlays) the minimum resulting sidewalk shall not be less than 10 feet or less than the existing sidewalk width, whichever is smaller.
- D. **Landscaping.** Removal of trees/landscaping to accommodate facilities is not permitted unless replaced with like kind/size or better in a ROW location deemed acceptable by the City Planner. Removal of trees/landscaping to accommodate facilities in the ROW is not permitted unless replaced with like kind/size or better in a ROW location deemed acceptable by the City Planner or City Engineer. Landscaping shall be used to screen ground-mounted equipment wherever possible.
  - E. **Modifications.** Modifications to existing facilities or collocations are permitted pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, and cannot defeat the stealthing elements of the existing structure/facility.
  - F. **Safety.** All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.
  - G. **Exceptions.** If the applicant demonstrates that the strict application of these standards would result in the effective prohibition of service or otherwise violate state or federal law, an exception shall be granted by the City to the standard or standards causing the effective prohibition, but only to the minimum extent required to avoid the prohibition or violation; all other standards and criteria would remain in effect. The applicant shall have the burden to prove to the City that the exception should be granted. The standard of evidence shall be the same as required by applicable federal or state law for the issue

raised in the applicant's request for exception. Exceptions may be requested only at the time the applicant submits an application. Any request for an exception after the initial submittal shall be deemed to be a new application. For the City to grant an exception to one or more of these Standards, the Applicant must provide substantial evidence in their written application materials the following:

1. A denial of the facility based on the application's noncompliance with a specific provision or requirement would violate state law, federal law, or both; or a provision in these Standards, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law; and
2. The request for exception deviates from these Standards to the least extent necessary for compliance with federal or state law or both (i.e. there are no viable, technically feasible, and aesthetically equivalent or superior alternatives that meet the Standards that could remedy the violation of state or federal law established in 1, above).

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## **Wireless Permit Standard Conditions**

### *Conditions applicable to all Wireless Permits*

1. *Code Compliance.* The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of rights-of-way.
2. *Permit Duration.* A Wireless Permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a Wireless Permit must either ( 1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
3. *Timing of Installation.* The installation and construction authorized by a Wireless Permit shall begin within two (2) years after its approval, or it will expire without further action by the City. This period may be extended at the City Planner's discretion if good cause is shown. The installation and construction authorized by a Wireless Permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced.
4. *Commencement of Operations.* The operation of the approved facility shall commence no later than six (6) months after the completion of installation, or the Wireless Permit will expire without further action by the City. This period may be extended at the City Planner's discretion if good cause is shown.
5. *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon forty-eight ( 48) hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The city shall make an effort to contact the Permittee prior to disabling or removing any facility elements, but in any case shall notify Permittee within twenty-four (24) hours of doing so.

6. *Contact.* The Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
7. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of \$5 million per occurrence for bodily injury and property damage and \$6 million general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
8. *Indemnities.* The Permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the Permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
9. *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. The Permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation, maintenance, or repair of a small wireless facility in the public right of way.
10. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a

permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a Wireless Permit, the Permittee shall provide the City with documentation establishing to the city's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the right-of-way to be affected by Permittee's facilities.

11. *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the Permittee within forty-eight (48) hours after notification from the City.
12. *RF Exposure Compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, a qualified expert chosen by the City must conduct on-site post-installation RF emissions testing, at Permittees sole cost and expense to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
13. *Testing.* Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:00 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
14. *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with applicable federal, state, and local regulations.
15. *Abandonment.* If a facility is not operated for a continuous period of ninety (90) days, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) day period (i) the City Engineer has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the Permittee has notified the City Engineer of its intent to vacate the site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the City Engineer. The Permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site

shall be deemed to be a nuisance, and the City may cause the facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

16. *Encourage Collocation.* Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
17. *Records.* The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.
18. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

*Conditions Specifically for Facilities in the ROW*

19. *No Right, Title, or Interest.* The permission granted by a Wireless Permit shall not in any event constitute an easement on or an encumbrance against the right-of-way. No right, title, or interest (including franchise interest) in the right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a Wireless Permit or the issuance of any other permit or exercise of any privilege given thereby.
20. *No Possessory Interest.* No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a Wireless Permit may create a possessory interest which may be subject to the



payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

21. *Site License Agreement.* Prior to any work in the public right-of-way on City-owned utilities/poles, a fully executed license agreement for use of the subject site, shall be in place between the City and the wireless carrier and/or operator of the wireless telecommunications facility. To the extent permitted by law, the applicant shall be responsible for any City Attorney cost associated with review and approval of the license agreement. This permit is not a substitute for such agreement.
22. *Encroachment Permits Required.* Prior to any work in the public right-of-way, the applicant shall submit for and obtain an Encroachment Permit to cover the inspection of the actual work in the public right-of-way. The public sidewalk shall remain open at all times of construction, unless otherwise approved by the City Engineer.
23. *Conflicts with Improvements.* For all facilities located within the ROW, the Permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. Relocation shall occur within 90 days after receiving notification from the City. Relocations and modifications are subject to applicable federal, state, and local regulations at the time the modification or relocation is required.
24. *Street Re-paving.* Prior to issuance of any Encroachment Permit, if it is determined that proposed work involves cutting into existing street paving that is subject to the City's Moratorium Policy, the City Engineer shall establish repair standards which may include repaving the entire width of the street in the area of the proposed work.
25. *As-Built Drawings* after installation of the facility. As-built drawings shall be in an electronic format acceptable to the City Engineer.
26. *Annual Certification.* Each year on July 1, the applicant shall be responsible to submit an affidavit which shall certify: (1) the facility permitted by this Wireless Permit remains in use; and (2) that the facility remains covered by insurance as required in these conditions. For facilities not still in use, see "Abandonment" in these conditions of approval. Such annual certification may be combined with the certification for other small wireless telecommunications facilities in the right-of-way from the same wireless carrier or facility operator. Where such annual

certification has not been timely submitted, no further applications for Wireless Permits for the delinquent wireless carrier or facility operator in the public right-of-way will be accepted by the City until such time as the annual re-certification has been submitted.

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