

liabilities, costs, or expenses whatsoever (including attorney's fees and costs) and claims therefore, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of, in any way growing out of, or connected with the permittee's use of the land subject to the permit or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), the Clean Water Act (33 U.S.C. Section 466 *et seq.*), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 *et seq.*), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 *et seq.*), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 *et seq.*).

H. Removal and restoration.

1. Upon the expiration or termination of the permit, permittee agrees to peacefully remove its wireless telecommunications antenna facility including, but not limited to, vacating the primary use and leaving it in as good condition as on the date of installation, except for reasonable wear and tear damage not caused by permittee. If

permittee fails to promptly remove its wireless telecommunications antenna facility within 30 days after expiration or earlier termination of the permit, the City may, after 15 days prior written notice to permittee, remove the same. Any such removal shall be without any liability to the City or any damage to such wireless telecommunications antenna facility that may result from reasonable efforts of removal. Permittee shall pay the City upon demand all reasonable costs incurred by the City in removing such wireless telecommunications antenna facility, to the extent such costs exceed the amount of the removal bond posted. The City has no obligation to store such wireless telecommunications antenna facility, and permittee shall have no claim if the City destroys a wireless telecommunications antenna facility not removed by permittee.

2. If permittee continues to have a wireless telecommunications antenna facility within the primary use after expiration or earlier termination of the permit, such holding over, unless otherwise agreed to by the Director in writing, shall constitute and be considered a tenancy at will. The monthly license fee for that tenancy shall be equal to twelve and one-half percent (12.5%) of the annual license fee paid during the preceding year and will be subject to all other terms of this section, including the annual percentage increase.

I. No estate. Permittee agrees that these conditions do not create or vest in permittee any estate in the primary use, but only the limited privileges of egress, entry, and use as described in these conditions and in the permit.

J. Possessory Interest Tax. Permittee agrees that its interest by way of a permit may be subject to a possessory interest tax or property tax, and that such tax shall not reduce the annual license fee due the City hereunder, and any such tax shall be the liability of and be paid by permittee.

K. Assignment. Permittee may assign or transfer a permit or any of the rights only with the approval of the Director, which consent shall not be unreasonably withheld or delayed.

12.22.190 – Business license

A permit issued under this Chapter shall not substitute for any business license otherwise required under this Code.

12.22.200 – Remedies not exclusive

Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

12.22.210 - Effect on other ordinances

A. Compliance with the provisions of this Chapter shall not relieve a person from complying with any other applicable provision of the Pasadena Municipal Code.

B. In the event of a conflict between any provision in this Chapter and Chapter 12.24 of this Code (Excavations), this Chapter shall control.

C. Nothing contained in this Chapter shall be deemed to supersede or modify the standards and size limitations (and exemptions thereon) for sign displays in Chapter 17.48 (Signs) of the Zoning Code.

D. Nothing contained in this Chapter shall be deemed to supersede or modify Section 17.50.310 of the Zoning Code, which regulates wireless telecommunications facilities located outside of the public right-of-way.”

SECTION 3. Pasadena Municipal Code, Title 17, Article 2, Chapter 17.22, Section 17.22.040, **TABLE 2-2 - ALLOWED USES AND PERMIT REQUIREMENTS FOR RESIDENTIAL ZONING DISTRICTS** is amended as shown in Exhibit - 1, attached hereto and incorporated by this reference.

SECTION 4. Pasadena Municipal Code, Title 17, Article 2, Chapter 17.24, Section 17.24.040, **TABLE 2-5 - ALLOWED USES AND PERMIT REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS** is amended as shown in Exhibit - 2, attached hereto and incorporated by this reference.

SECTION 5. Pasadena Municipal Code, Title 17, Article 2, Chapter 17.26, Section 17.26.030, **TABLE 2-7 - ALLOWED USES AND PERMIT REQUIREMENTS FOR SPECIAL PURPOSE ZONING DISTRICTS** is amended as shown in Exhibit - 3, attached hereto and incorporated by this reference.

SECTION 6. Pasadena Municipal Code, Title 17, Article 3, Chapter 17.31, Section 17.31.040, **TABLE 3-3 - ALLOWED USES AND PERMIT REQUIREMENTS**

FOR ECSP ZONING DISTRICTS is amended as shown in Exhibit – 4, attached hereto and incorporated by this reference.

SECTION 7. Pasadena Municipal Code, Title 17, Article 3, Chapter 17.32, Section 17.32.050, **TABLE 3-5 - ALLOWED USES AND PERMIT REQUIREMENTS FOR EAST PASADENA SPECIFIC PLAN (EPSP) D1 DISTRICTS** and **TABLE 3-6 - ALLOWED USES AND PERMIT REQUIREMENTS FOR EAST PASADENA SPECIFIC PLAN (EPSP) D2 AND D3 DISTRICTS** are amended as shown in Exhibit - 5 and Exhibit - 6, respectively, attached hereto and incorporated by this reference.

SECTION 8. Pasadena Municipal Code, Title 17, Article 3, Chapter 17.33, Section 17.33.040 is amended by amending **TABLE 3-13 - ALLOWED USES AND PERMIT REQUIREMENTS FAIR OAKS/ORANGE GROVE RM-16, RM-12, PS AND OS DISTRICTS** and **TABLE 3-14 - ALLOWED USES AND PERMIT REQUIREMENTS FAIR OAKS/ORANGE GROVE CL, C-2, AND C-3 DISTRICTS** are amended as shown in Exhibit - 7 and Exhibit - 8, respectively, attached hereto and incorporated by this reference.

SECTION 9. Pasadena Municipal Code, Title 17, Article 3, Chapter 17.36, Section 17.36.050, **TABLE 3-16 - ALLOWED USES AND PERMIT REQUIREMENTS FOR WGSP ZONING DISTRICTS** is amended as shown in Exhibit – 9, attached hereto and incorporated by this reference.

SECTION 10. Pasadena Municipal Code, Title 17, Article 5, Chapter 17.50, Section 17.50.310, entitled "Telecommunications Facilities" shall be amended to read as follows:

"17.50.310 Telecommunications Facilities

A. Applicability. Wireless telecommunications antenna facilities shall comply with the following requirements. The provisions of this Section do not apply to satellite earth station antennas due to preemption by Part 25 of Title 47 of the Code of Federal Regulations. The provisions of this Section also do not apply to wireless telecommunications antenna facilities in the public right-of-way, which are governed by Chapter 12.22 of the Municipal Code.

B. Definitions. The Specialized terms and phrases used in this Section are defined under "Telecommunications Facility Definitions" in Article 8 (Glossary).

C. Special notice. All notices required by this Subsection shall be provided in compliance with Chapter 17.76 (Public Hearings).

1. Notices of public hearings for Wireless Telecommunications Antenna Facilities, Major, shall also be mailed to occupants of buildings and registered neighborhood associations within 1,000 feet of the primary use site boundary.

2. Notices of public hearings for Wireless Telecommunications Antenna Facilities, Minor, shall also be mailed to occupants of buildings and registered neighborhood associations within 300 feet of the primary use site boundary.

3. Notices of application submittal and comment periods for Wireless

Telecommunications Antenna Facilities, SCL, shall be mailed as follows:

a. In residential districts, to occupants of buildings and registered neighborhood associations within 300 feet of the primary use site boundary. The comment period is 30 days.

b. In all other zoning districts, to abutting property owners, and posted as set forth in Section 17.76.020.B(2). The comment period is 30 days.

D. Requirements for all facilities.

1. Prohibited fencing materials. The use of chain-link fencing or razor wire in the design of a facility or related support facilities is prohibited.

2. Screening required. Support facilities housed outside of structures shall be screened from public view by fences, landscaping, trellises, walls, and similar treatments.

3. Design Guidelines. Facilities subject to this section shall comply with any design guidelines adopted by resolution of the Council.

4. Illumination. Building-mounted facilities and support structures may not be illuminated unless specifically required by the Federal Aviation Administration or other governmental agencies.

5. Signs. No off-premises or on-premises signs may be placed by a wireless telecommunications service provider on a building or support structure to which a facility

is attached. Each facility shall be located a minimum of 25 feet from an existing off-premises sign or an on-premises freestanding sign.

6. Site maintenance. The site of the facilities shall be maintained in a condition free of debris, refuse, and trash. All graffiti shall be removed within 48 hours.

7. Radio Frequency Emissions Compliance. Upon installation of the facility, the applicant shall demonstrate that the project will not result in levels of radio frequency emissions that exceed Federal Communications Commission standards, including FCC Office of Engineering Technology (OET) Bulletin 65, Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, as amended. Additionally, if the Director determines the wireless telecommunications facility, as constructed, may emit radio frequency emissions that are likely to exceed Federal Communications Commission uncontrolled/general population standards in the FCC Office of Engineering Technology (OET) Bulletin 65, Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, as amended, in areas accessible by the general population, the Director may require post-installation testing to determine whether to require further mitigation of radio frequency emissions. The cost of any such testing and mitigation shall be borne by the applicant. Applications for amateur radio antennas or antennas installed for home entertainment purposes are exempt from this requirement.

8. Posting of removal bond or security. Before the issuance of any permit under this section, the applicant shall post with the City a performance bond or other security in an amount rationally related to the cost of removal.

9. City's use of consultant. The Director may require the applicant to provide an authorization to permit the City to hire an independent, qualified consultant to evaluate any technical aspect of the proposed use, including issues involving radio frequency emissions, alternative designs, and alternative sites. Any authorization for this purpose shall include an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation. Any proprietary information disclosed to the City or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law.

10. Inoperable or unused facilities.

a. If a support structure, or an antenna array affixed to a building or support structure, becomes inoperable or ceases to be used for a period of 180 consecutive days:

(1) The permittee shall give written notice of inoperability or nonuse to the Zoning Administrator; and

(2) The antenna array and, if applicable, the support structure shall be removed within 90 days.

b. If removal does not occur, the City may remove the antenna array and, if applicable, the support structure, at the permittee's expense; provided, however, that if other

antenna arrays owned or operated by other service providers are affixed to the same support structure then only the antenna array that has become inoperable or has ceased to be used is required to be removed, and the support structure may remain in place until all service providers cease to use it.

11. Length of permit and extension.

a. A permit issued under this section shall be valid for an initial period of not less than 10 years.

b. Upon expiration of the initial period, the permit may be extended by a decision by the Director for a period no longer than the initial period upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other provisions provided for in this Code which are in effect at the time of the permit renewal request.

c. The Director shall provide notice of the extension only to the applicant, all persons who have filed a written request for notice of the extension, the Planning Commission, and the City Council.

12. Existing agreements. This section does not apply to the terms and conditions of any agreement or permit (including an extension) pertaining to telecommunications facilities (issued by the City or of which the City is a party) that is already in existence at the effective date of this ordinance, provided that the agreement or permit does not result in a material change (including changes in size, shape, color, or exterior material) of the telecommunications facilities covered by such existing agreement.

13. City-owned real property.

Any wireless telecommunications antenna facility permitted to be located on City-owned real property shall comply with any of the conditions in Section 12.22.180 of the Municipal Code as determined applicable by the Director, in addition to the other requirements of this section. For purposes of this Subsection, all references in Section 12. 22.180 to “Director” shall mean the Director of Planning and Development.

E. Requirements for new support structures. (Wireless Telecommunications Antenna Facilities, Major).

- 1. Projection from roof prohibited.** No new support structure may project from the roof of a building.
- 2. Separation from buildings.** A new support structure shall be a minimum of 10 feet from a building on the same site unless that building houses equipment accessory to the support structure.
- 3. Setback from residential.** Where permitted, a new, support structure, including any accessory structure, shall be located at a minimum distance equal to but not less than 100 feet from the site of any residential use or any residentially zoned land.
- 4. Co-location.** The co-location of antennas on a single support structure is encouraged. This includes co-location with other wireless telecommunications antenna facilities including those of public and quasi-public agencies using similar technology unless specific technical constraints preclude co-location.

5. Camouflage. A new support structure that is designed to look like a faux tree or flag pole shall comply with the following requirements:

a. Flag Poles. A flag shall be flown and properly maintained at all times, and the base of the pole shall be appropriately tapered to maintain the appearance of an actual flag pole.

b. Faux Trees. If a faux tree is proposed, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

6. Height limit. Where allowed, support structures shall not exceed a maximum height of 50 feet above existing grade in any zoning district.

7. Justification Study. The applicant shall submit a justification study indicating the rationale for selecting the proposed use, a detailed explanation of the coverage gap that the proposed use would serve, and how the proposed use is the least intrusive means for the applicant to provide wireless service.

8. Location.

a. A support structure and any related ground-mounted equipment cabinet shall not be located within an area devoted to a vehicle/pedestrian circulation area in such a manner that it interferes with or impairs the utility of intended function of such area.

b. Where feasible, unutilized space should be made available for co-location with other wireless telecommunications antenna facilities, including space for entities providing competing services. Co-location of wireless telecommunications antenna facilities is not required in cases where the addition of new service of facilities would cause service impairment to an existing facility, or if it became necessary for the host facility to go off-line for a significant period of time.

c. A support structure shall not be located within any designated historic district or landmark district.

d. A support structure shall not be located within any City-owned library property.

9. Distance Requirement. There shall be a 500-foot distance requirement between each site containing an individual support structure, measured from site to site.

10. Finding required for approval.

a. Required finding. No new support structure will be allowed unless the review authority, in addition to the findings required by Section 17.61.050.H, first finds that, based upon evidence submitted by the applicant, no existing building or support structure can reasonably accommodate the proposed wireless telecommunications antenna facility.

b. Evidence to support finding. Evidence supporting the required finding will be reviewed by the Zoning Administrator and may consist of any of the following:

(1) No existing buildings or support structures are located within the geographic area proposed to be served by the applicant's facility;

(2) Existing buildings or support structures are not of sufficient height to meet the applicant's operational or engineering requirements; or

(3) The applicant's proposed facility would create radio frequency interference with an existing structure, or the existing structure would create radio frequency interference with the applicant's proposed facility.

11. Security. The support structure and support facilities shall be constructed so as to prevent unauthorized entry into the support facilities or onto the support structure.

F. Requirements for co-located facilities (Wireless Telecommunications Antenna Facilities, Minor). Unless shielded from public view, the antenna array may not extend above the highest ridge line of the roof line or parapet of an existing structure. However, whip antennas and omni-directional antennas may extend up to 10 feet above the roof line or parapet of an existing structure. To the extent feasible, the antenna array shall be integrated into the design of the structure it is mounted to and be fully screened from public view.

1. Screening. All screening shall be compatible with the architecture, color, texture, and materials of the building or other structure to which it is mounted.

2. Concealed from public view. All sides of the project shall be concealed from public view. There shall be no visible transition between existing and new surfaces, no exposed cables, mounting apparatus or pipes permitted, and no interruption of horizontal or vertical reveals.

3. Private light poles. If co-locating on a privately-owned light pole, the replacement pole shall match the color, height, and design of existing light poles on the site.

G. Requirements for building-mounted facilities. Unless shielded from public view, the antenna array of a building-mounted facility may not extend above the highest ridge line of the roof line or parapet of an existing structure. However, whip antennas and omni-directional antennas may extend up to 10 feet above the roof line or parapet of an existing structure.

H. Requirements for Wireless Telecommunications Antenna Facilities, Specific Co-Located.

1. Ministerial permit. The City shall not require a discretionary permit for a Wireless Telecommunications Antenna Facility, SCL, if it satisfies the requirements of California Government Code Section 65850.6(a), as amended.

2. Application requirements. An application for a Wireless Telecommunications Antenna Facility, SCL, shall be filed in compliance with Chapter 17.60 (Application Filing and Processing). The application shall be accompanied by the information identified in the Department handout for Wireless Telecommunications Antenna Facility, SCL, applications and shall include payment of any application fee.

3. Review authority. An application for a Wireless Telecommunications Antenna Facility, SCL, shall be reviewed by the Director.

4. Required findings for approval.

The Director shall approve an application only after finding that:

- a. The proposed use is allowed within the zoning district and complies with all applicable provisions of this Code.
- b. The location of the proposed use complies with the special purposes of this Code and the applicable zoning district, and is in conformance with the goals, policies, and objectives of the General Plan.
- c. The proposed use does not increase the height of the existing wireless telecommunications antenna facility.
- d. The proposed use complies with all requirements for major wireless telecommunications antenna facilities within this section.
- e. The proposed use will not be detrimental to the health or general welfare of persons residing or working in the neighborhood of the proposed use.
- f. The proposed use will be compatible with the existing uses on the site and uses in the vicinity in terms of aesthetic values, character, scale, and view protection and will not interfere with the existing activities at the site.

5. Decision. The Director shall prepare a written decision to approve, approve with conditions, or disapprove the application. The Director shall provide notice of the decision to the applicant, all persons who have filed a written request for notice of the decision, the Planning Commission, and the City Council.

SECTION 11. Pasadena Municipal Code, Title 17, Article 6, Chapter 17.60.020,

TABLE 6-1 - REVIEW AUTHORITY is amended as shown in Exhibit - 10 attached hereto and incorporated by this reference.

SECTION 12. Pasadena Municipal Code, Title 17, Article 8, Chapter 17.80,

Section 17.80.020 is amended as follows:

a. By amending the following subdefinition located under the definition of “Telecommunication Facility” as follows:

“6. Wireless Telecommunications Antenna Facilities, Minor. A wireless telecommunications antenna facility that is designed to be building-mounted, or co-located on an existing structure with the facilities or other wireless communications service providers.

b. By adding the following new subdefinition located under the definition of “Telecommunication Facility” as follows, and renumbering as necessary:

“8. Wireless Telecommunications Antenna Facilities, Specific Co-Located (SCL).

A wireless telecommunications antenna facility that is placed on, or immediately adjacent to, an existing wireless telecommunications antenna facility that satisfies the requirements of California Government Code Section 65850.6(a), as amended.”

SECTION 13. Section 18.08.030 of the Pasadena Municipal Code is amended to remove the introductory phrase “Title 17” and replace it with the phrase “Titles 12 and 17” as follows:

“18.08.030 Antennas for telecommunications services.

Titles 12 and 17 of this Code sets forth the City's regulatory requirements relating to the siting and construction of the following categories of antennas that are commonly used in providing or receiving telecommunications services.”

SECTION 14. Section 18.08.040, subdivision (B)(1) shall be amended as follows:

“1. The telephone corporation must apply for and obtain, as may be applicable, a permit, an encroachment permit, or a building permit (ministerial permit).”

SECTION 15. Section 18.08.040, Subdivision B(2) shall be amended as follows:

“2. In addition to the information required by this Code in connection with an application for a permit, a telephone corporation must submit to the City the following supplemental information:”

SECTION 16. Section 18.08.040, Subdivision B(2)(b)(iii) shall be amended as follows:

“(iii) The applicant must inform the City whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration [“Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California”] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The City's issuance of a permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as “competitive local carriers.” ”

SECTION 17. Section 18.08.040, subdivision (C)(1) shall be amended as follows:

“1. The City manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a permit that authorizes the construction of facilities within the public rights-of-way.”

SECTION 18. Section 18.08.040, subdivision (C)(2) shall be amended as follows:

“2. The City manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the City manager is authorized to establish on a quarterly basis one or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for permits to construct facilities after a predetermined date may be required to delay such construction until the next quarterly "window" that is established by the City.”

SECTION 19. Ordinance No. 7144, An Extension of the Interim Urgency Ordinance of the City of Pasadena Temporarily Prohibiting the Issuance of Permits for the Placement, Construction, and Modification of Ground-Mounted Commercial Wireless Facilities in Residential Zoning Districts, is hereby repealed.

SECTION 20. The City Council hereby declares that, should any section, paragraph, sentence, phrase, term or word of this ordinance, hereby adopted, be

declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared invalid.

SECTION 21. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 22. This ordinance shall take effect 30 days from its publication.

Signed and approved this _____ day of _____, 2009.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Jayan N. Rad
Deputy City Attorney