

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING A NEW CHAPTER 12.22 TO THE PASADENA MUNICIPAL CODE ENTITLED "TELECOMMUNICATIONS FACILITIES," AMENDING SECTION 17.50.310 OF THE PASADENA MUNICIPAL CODE ("TELECOMMUNICATIONS FACILITIES"), MAKING CONFORMING AMENDMENTS TO TITLES 17 AND 18 OF THE PASADENA MUNICIPAL CODE, AND REPEALING ORDINANCE NO. 7144, AN INTERIM URGENCY ORDINANCE RELATING TO GROUND-MOUNTED WIRELESS FACILITIES IN RESIDENTIAL ZONES

WHEREAS, the Land Use Element set forth policies and goals toward the protection of the residential character of Pasadena's residential neighborhoods and the promotion of urban design which is compatible with Pasadena's unique character and in context with surrounding development; and

WHEREAS, given the increasing use of telecommunications facilities in society today, the City expects to receive applications for permits for such facilities in increasing number, some of which facilities are significantly larger than most similarly situated existing installations; and

WHEREAS, the City does not intend that this ordinance prohibits or has the effect of prohibiting telecommunications service; rather, the City seeks to limit development of telecommunications facilities in and around residential neighborhoods to the fullest extent allowed by law; and

05/18/2009
8.B.1.

WHEREAS, the City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and State law, and believes that it is exercising its regulatory authority pursuant to the fullest extent under the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare; and

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary reads as follows:

“Summary

Ordinance No. _____ amends Title 12 of the Pasadena Municipal Code to add a new Chapter 12.22 to regulate both wireless and wireline telecommunications facilities within the public right-of-way, amends Section 17.50.310 of the Pasadena Municipal Code to revise the existing wireless telecommunications facilities regulations on all property outside the public right-of-way, and makes conforming minor amendments to Titles 17 and 18 of the Pasadena Municipal Code. The ordinance also repeals Ordinance 7144, which was an interim urgency ordinance temporarily prohibiting the installation of ground-mounted commercial wireless facilities in residential zones.

Ordinance No. _____ shall take effect 30 days from its publication.”

SECTION 2. Pasadena Municipal Code, Title 12 (Streets and Sidewalks), is amended to add a new Chapter 12.22 as follows:

“Chapter 12.22 – Telecommunications Facilities

Sections

- 12.22.010 - Short title**
- 12.22.020 - Definitions**
- 12.22.030 - Prohibited on public streets**
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- 12.22.050 - Permit required**
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- 12.22.080 - Special notice**
- 12.22.090 - Time for decision**
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- 12.22.110 - Installation standards applicable to all telecommunications facilities**
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- 12.22.130 - Maintenance standards**
- 12.22.140 - Hold harmless agreement**
- 12.22.150 - Insurance required**
- 12.22.160 - Summary removal**
- 12.22.170 - Removal of facility for public purpose**
- 12.22.180 - Additional conditions of approval for wireless telecommunications facilities co-located on primary use owned by the City**
- 12.22.190 - Business license**
- 12.22.200 - Remedies not exclusive**
- 12.22.210 - Effect on other ordinances**

12.22.010 - Short title

This Chapter shall be known as “the Telecommunications Facility Ordinance” and serves as the City’s regulation over such facilities in the public right-of-way.

12.22.020 – Definitions

For the purpose of this Chapter, certain words and phrases are defined in this section, unless it is apparent from the context that a different meaning is intended:

A. "Antenna array" means one or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include omnidirectional antennas (whip), directional antennas (panel), and parabolic antennas (dish), but excluding any support structure.

B. "Co-locate" means a site or facility where a wireless provider shares a telecommunications facility with an existing structure, such as an existing street light or utility pole.

C. "Corner lot" means a lot bounded by two or more intersecting streets that has an angle of intersection of not more than 135 degrees. The intersecting streets shall not be the same street. In determining the angle of intersection for a rounded corner, straight lines shall be drawn as extensions of both street lines. The calculation of the angle of intersections shall be made from the side facing toward the lot at the point where these two extensions meet.

D. "Director" means the Director of the Department of Public Works or his/her written designee. The Director is hereby designated as the administrative enforcement official for this Chapter and may issue a compliance order pursuant to Chapter 1.25 of this Code and an administrative citation pursuant to Chapter 1.26 of this Code, and a violator shall be subject to the procedures, costs and civil penalties set forth therein.

E. "Parkway" means that area between the sidewalk and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway and the property line adjacent thereto. Parkway shall also include any area within a roadway, which is not open to vehicular travel.

F. "Permit" means a permit issued pursuant to this Chapter allowing the placement of a telecommunications facility within a specifically designated portion of the public right-of-way.

G. "Person" means any individual, firm, company, corporation or other organization.

H. "Primary use" means the main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours which activities occur, including, but not limited to, a street light or power pole.

I. "Public sidewalk" means any surface dedicated to the use of pedestrians by license, easement, operation of law or by grant to the City.

J. "Public right-of-way" or "right-of-way" means any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.

K. "Public street" means all of that area dedicated to public use for public street and sidewalk purposes and includes, but is not limited to, roadways, parkways, alleys and sidewalks.

L. "Residential frontage" means the side or face of a residential building which is parallel to or is at an angle of 45 degrees or less to a public street or public parking area.

M. "Roadway" means that portion of a public street improved, designed or ordinarily used for vehicular travel.

N. "Support structure" means a freestanding structure designed and constructed to solely support an antenna array and that may consist of a monopole, a self-supporting lattice tower, a guy-wire support tower, or other similar structure.

O. "Telecommunications Facility" means and includes any wire or line, antenna, pipeline, pipe, duct, conduit, converter, cabinet, pedestal, meter, tunnel, vault, equipment, drain, manhole, splice box, surface location marker, pole, structure, utility, or other appurtenance, structure, property, or tangible thing used to provide telecommunications and/or video service to the public.

12.22.030 - Prohibited on roadway of public street

No person shall install, use or maintain any telecommunications facility which projects onto, in or over any part of the roadway of any public street or which rests, wholly or in part, upon, along or over any portion of the roadway of any public street.

12.22.040 – Dangerous condition or obstruction

No person shall install, use or maintain any telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons

or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such telecommunications facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.22.050 – Permit required

A. No person shall install or maintain any telecommunications facility which in whole or in part rests upon, in or over the public right-of-way without first obtaining a permit from the Director under this Chapter.

B. Applications for permits for telecommunications facilities shall be made to the Director and shall contain the following:

1. The name, address and telephone number of the owner of the telecommunications facility;
2. The name, address and telephone number of the responsible person whom the City may notify or contact at any time concerning the telecommunications facility;
3. A site plan containing the exact proposed location of the facility (including a description of the location in a format compatible with the City's geographic information system database), and detailed plans created by a qualified licensed engineer and in accordance with requirements set by the Director;

4. A photograph and/or model number of the type of telecommunications facility being used;
5. A hold harmless agreement pursuant to Section 12.22.140;
6. A certificate of insurance pursuant to Section 12.22.150;
7. Agreement to conform to the requirements of this Chapter; and
8. An application and processing fee, as established by resolution of the City Council.

C. Applications will not be accepted for geographic locations which are then unavailable due to current or proposed public improvements as specified in the current Capital Improvement Program.

D. This section does not apply to the terms and conditions of any agreement or permit (or extension thereof) 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 (or extension thereof) does not result in a material change (including, but not limited to, changes in size, shape, color, or exterior material) of the telecommunications facilities covered by such existing agreement.

12.22.060 – Findings required for all telecommunications facilities

No permit shall be granted unless the following findings can be made by the Director:

- A. The proposed use is allowed in the public right-of-way and complies with all applicable provisions of this Chapter;

B. Prior to the installation of any telecommunications facility, the applicant has demonstrated that the installation will not interfere with the use of the public right-of-way and existing subterranean infrastructure.

C. The applicant has coordinated the final siting location of the telecommunications facility with the Director.

D. All notification requirements for the proposed telecommunications facility have been met.

12.22.070 – Additional findings required for wireless telecommunications facilities

No permit shall be granted for any wireless telecommunications facility if the following additional findings cannot be made by the Director:

A. The applicant has demonstrated, by way of a justification study, 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.

B. The applicant has posted a performance bond or other security in an amount rationally related to the cost of removal.

C. The wireless telecommunications facility will not result in levels of radio frequency emissions that exceed Federal Communications Commission standards, including, but not limited to, 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. Applications for amateur radio antennas or antennas installed for home entertainment purposes are exempt from this requirement.

12.22.080 – Special notice

A. Notice of application submittal.

1. Residential districts. Notice that the application has been submitted shall be provided pursuant to Section 17.76.020 of this Code in the same form and manner as the notice requirements for minor variances and minor use permits. Additionally, notice that the application has been submitted shall be mailed to occupants of buildings within 300 feet of the site boundaries and registered neighborhood associations whose boundaries fall within 300 feet of the site boundary.

2. All other zoning districts. Notice that the application has been submitted shall be posted pursuant to Section 17.76.020(B)(2) of this Code in the same form and manner as the posting requirements for minor variances and minor use permits. Additionally,

notice that the application has been submitted shall be mailed to abutting property owners.

B. Comment period. Written comments received by the Director during this period shall be considered as part of the staff review.

1. Residential districts. For proposed uses located in residential zoning districts, the comment period shall be 30 days from the date notice is provided.

2. All other zoning districts. For proposed uses located all other zoning districts, the comment period shall be 10 days from the date notice is provided.

C. Notice of installation. After issuance of a permit, and no later than 48 hours prior to installation, written notice shall be provided to the same persons who originally received notice pursuant to subdivision (A) of this Section.

12.22.090 – Time for decision

A. A permit for a telecommunications facility that provides video services for a holder of a statewide video franchise shall be granted, denied or granted conditionally by the Director no later than 60 days after receiving a completed application.

B. A permit for all other telecommunications facilities shall be granted, denied or granted conditionally by the Director within a reasonable time after receiving a completed application.

C. If the Director denies an application, the Director shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

12.22.100 – Appeals

Any interested person may appeal the decision of the Director pursuant to this Chapter to the City Council. The appeal shall be filed with the City Clerk within 14 days after the decision by the Director from which the appeal is being taken.

12.22.110 – Installation standards applicable to all telecommunications facilities

A permit for telecommunications facilities within the public right-of-way shall comply with the following installation standards.

A. The telecommunications facility shall be colored to blend with other streetscape or surrounding features to the extent feasible.

B. In the event the parkway and/or roadway, where approved, adjacent the applicant's telecommunications facility disturbed or altered in the process of installation, the applicant shall restore the parkway to the condition in which it existed prior to installation.

C. No modifications to above-ground or at-grade telecommunications facility, including those related to size, color, and shape of the housing, may be made by the applicant without first having obtained approval from the Director.

D. Where feasible, as new technology becomes available, the applicant shall place an existing or proposed above-ground telecommunications facility below ground.

E. There shall be no more than one above-ground telecommunications facility per each residential frontage.

F. In residential districts where a telecommunications facility is proposed adjacent to a corner lot, the facility shall be located along the side yard and not on the primary frontage of a residence, if feasible.

G. To the extent feasible, the area surrounding the telecommunications facility shall be maintained with landscaping or alternate screening. The landscaping shall be irrigated and of a sufficient height and density to screen the facility from the public sidewalk and parkway.

H. The applicant shall obtain the Director's approval of a tree protection plan prepared by a Certified Arborist for the installation of any telecommunications facility located within the canopy of a street tree, or a protected tree on private property, or within a minimum of a ten foot radius of the base of such a tree. Depending on site specific criteria (e.g. location of tree, size and type of tree etc.), a radius greater than 10 feet may be required by the Director.

I. No telecommunications facility may be illuminated unless specifically required by the Federal Aviation Administration or other governmental agencies.

J. At the discretion of the Director, the applicant may be required to provide an authorization to permit the City to hire an independent, qualified consultant to evaluate any technical aspect of a proposed wireless telecommunications facility, including, but not limited to, issues involving radio frequency emissions, alternative designs, and alternative sites. Any authorization for this purpose shall include a deposit to cover 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.

12.22.120 – Additional installation standards applicable to wireless telecommunications facilities

- A. No support structures are permitted in the public right-of-way.
- B. No wireless telecommunications facility shall be located on a pole that is less than 25 feet in height.
- C. An antenna array shall be co-located and shall not extend over seven feet beyond the top of the pole.
- D. When feasible, panel antennas shall utilize brackets that allow no more than a 4 inch extension from the pole. Panel antennas shall not exceed the height of the pole.
- E. All permits for wireless telecommunications facilities shall be valid for no less than ten (10) years. The Director may administratively extend the term of the permit for subsequent ten year terms 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 the Municipal Code which are in effect at the time of permit renewal.
- F. If an applicant proposes to replace a pole in order to accommodate their telecommunications facility, the pole shall match the appearance of the original pole to the extent feasible and shall be approved by the Director.

12.22.130 – Maintenance standards

The following standards are applicable to all telecommunications facilities subject to this Chapter:

A. The applicant shall provide on-going maintenance of its telecommunications facilities, including ensuring the facilities are reasonably free of:

1. General dirt and grease;
2. Chipped, faded, peeling, and cracked paint, or on all visible painted areas;
3. Rust and corrosion on all visible unpainted metal areas;
4. Cracks, dents, blemishes, and discoloration;
5. Graffiti, bills, stickers, advertisements etc.; and
6. Broken and misshapen structural parts.

B. If an applicant discontinues use or abandons any telecommunications facilities, the applicant shall (1) immediately notify the Director; (2) remove the equipment and restore the site to the previous condition within 90 days of notification to the Director and in a manner approved by the Director.

C. The telecommunications facilities shall be maintained such that they comply at all times with the Noise Restrictions Ordinance.

D. All ground-mounted, at-grade, and above-ground telecommunications facilities shall be properly maintained in accordance with the following procedures:

1. All necessary repairs, including graffiti removal, shall be completed by the applicant within 48 hours after discovery of the need for such repairs or in receiving notification from a resident or the Director.
2. The applicant shall provide routine maintenance within 10 working days after receiving notification from a resident or the Director.
3. The applicant shall replace ground-mounted, at-grade, and above-ground telecommunications facilities, in kind, if routine or emergency maintenance is not sufficient to return the equipment to the condition at the time of installation.

12.22.140 – Hold harmless agreement

A condition of issuance of a permit is that every permittee, and person on a shared permit, agrees to defend, indemnify, and hold harmless the City of Pasadena, its City Council, officers, and employees to the maximum extent permitted by law, from any loss or liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use, or maintenance of the applicant's facilities subject to this Subdivision.

12.22.150 – Insurance required

A condition of issuance of a permit is that every permittee agrees to maintain a policy of public liability insurance, naming the City as an additional insured, in an amount that meets or exceeds the minimum levels and standards of liability insurance and claims reserve, established by the Director.

12.22.160 – Summary removal

In the event the Director determines that the condition or placement of a telecommunications facility constitutes a dangerous condition or obstruction, as defined in Section 12.22.040 of this Code, or that a telecommunications facility has been placed in the public right-of-way without a permit, the Director may cause the facility to be removed summarily and without a hearing. An administrative citation shall be served upon the person who owns the facility within two business days of removal in the manner set forth in section 1.26.050 of this Code, and if the owner cannot be identified, the telecommunications facility shall be treated as abandoned property.

12.22.170 – Removal of facility for public purpose

When the Director determines that it is necessary to remove a telecommunications facility for the construction or installation of public improvements, an order to comply pursuant to Chapter 1.25 of this Code may be issued for the purpose of suspending or terminating the permit. The person who holds the permit for the telecommunications facility shall be entitled, on permittee's election, to either a pro-rata refund of fees or to a new permit, without additional fee, in the original location or as close to the original location as the standards set forth in this Chapter allow.

12.22.180 – Additional conditions of approval for wireless telecommunications facilities co-located on primary use owned by the City

Any wireless telecommunications facility permitted to be co-located on a primary use that is owned by the City shall comply with all of the following additional conditions:

A. Construction.

1. Permittee shall perform all work within, around, or on the primary use in accordance with plans furnished to and approved by the Director, in a manner acceptable to the Director.
2. Permittee shall, at its sole cost and expense, shall undertake and diligently perform to completion the installation of its facilities.
3. In connection with permittee's installation or maintenance of its facilities, the permittee shall agree to:
 - a. Repair any damage caused by permittee to any building, public facility, utility facility, or other improvement in, on, or under any portion of the primary use;
 - b. Perform all work required or permitted hereby: (i) in a manner so as to cause minimal inconvenience or undue interference with vehicular traffic and property owners located adjacent to the primary use; (ii) at such times and in such manner as may be reasonably requested or approved by the Director; and (iii) only with all necessary or appropriate provisions for the safety and convenience of all persons potentially affected thereby; and
 - c. Replace and/or restore any area (regardless of whether located on the primary use or not) affected by permittee's work or other acts pursuant hereto at least as good a condition as such areas were in prior to commencement of such work, reasonable wear and tear and casualty beyond permittee's control expected.

B. As-built drawing. Permittee shall submit an "as-built" drawing within ninety (90) days after installation of the facilities.

C. Access. Permittee shall not place any facilities which will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the primary use site. Permittee agrees to allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the primary use site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.

D. Default. In addition to the remedies provided herein, any person who violates any of the conditions of this Section may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of this Code, including, but without limitation, civil penalties, late payment penalties, administrative fees, and other related charges.

E. License Fee.

1. A wireless telecommunications antenna facility subject to this section and that is co-located on City-owned property will be subject to an annual license fee, set by the Director no later than the time of issuance of the permit. The first annual license fee shall be paid no later than 15 days after installation of the wireless telecommunications antenna facility. Thereafter, permittee shall make an annual license fee payment on each July 1.

2. If the permit is revoked or terminated for any reason other than a default by permittee, the City shall refund to permittee the unused portion of the annual license fee that was paid by permittee for the year in which such termination occurs.

3. Commencing each July 1 following installation of the wireless telecommunications antenna facility, and thereafter on each July 1, the annual license fee will be automatically increased by multiplying the annual license fee for the preceding year by 3.5%.

4. If permittee fails to pay the annual license fee within 10 days after permittee receives notice of its failure to pay the license fee as of the due date, the past-due license fee will bear interest from the date due until paid at the lesser of (i) 12% per annum; or (2) the maximum rate permitted by law, if the 12% rate exceeds that maximum.

5. Permittee shall agree that the license fee is the right to locate its wireless telecommunications antenna facility upon the City-owned primary use and is in no way intended to be an abrogation or diminishment of any rights that may exist for permittee under California Public Utilities Code Sections 7901 and 7901.1.

F. Relocation. If, at any time, the Director determines, at his sole and absolute discretion, that the primary use needs to be removed, relocated, or realigned due to a public improvement project, permittee shall agree, within 180 days after receipt of written notice from the Director, forthwith and diligently take all necessary action in the determination of the Director to remove, relocate, and/or realign, as the case may be, its wireless telecommunications antenna facility at the sole cost and expense of permittee. Relocation and/or realignment of the wireless telecommunications antenna facility shall be determined at the discretion of the Director.

G. Assumption of risk.

1. Permittee agrees to inspect the primary use prior to installing its wireless telecommunications antenna facility. Permittee shall exercise its rights under its permit at its own risk and expense, assuming full responsibility for all risks incidental to the use of its wireless telecommunications antenna facility on the primary use thereon.
2. Permittee agrees that the City assumes no responsibility whatsoever for the safe condition, security, or maintenance of the wireless telecommunications antenna facility on the primary use, or for the protection of persons and property therein, as all such responsibility shall solely be permittee's.
3. Permittee agrees that the City assumes no responsibility whatsoever for any damage caused, directly or indirectly, on the primary use by permittee's installation of the wireless telecommunications antenna facility, as all such responsibility shall solely be permittee's.
4. Permittee agrees that the City does not have requisite information to determine the exact location, size, type, and depth of all utility facilities crossing through or aligned with the area used by the permit. Permittee assumes the risk that adverse physical conditions or the applicability and effect of the operative or the applicability and effect of the operative or proposed laws or regulations applicable to the area of permittee's wireless telecommunications antenna facility may not have been revealed by the City's investigation.
5. To the maximum extent permitted by law, permittee waives its right to recover from the City, its members, officers, employees, and agents, any and all damages, losses,