

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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(562) 590-5071



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# W20a

## ADDENDUM

March 6, 2017

**TO:** Coastal Commissioners and Interested Parties

**FROM:** South Coast District Staff

**SUBJECT:** **City of Laguna Beach Local Coastal Program (LCP) Amendment Request No. 2-13 (LCP-5-LGB-13-0216-2 Wireless Communications Facilities),** scheduled for the Commission meeting of March 8, 2017

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### REVISION TO THE STAFF REPORT

This addendum clarifies the suggested modifications on the bottom of Page 11 and on the top of Page 19 of the staff report dated February 23, 2017, as follows, with added language identified in ***bold italicized underlined text***.

**Pages 11 and 19 of the staff report are modified as follows:**

***25.55.006 Permits required.***

*In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remain applicable ***except when inconsistent with federal law.****

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# W20a

February 23, 2017

**TO:** Commissioners and Interested Persons

**FROM:** Karl Schwing, Deputy Director  
Charles Posner, Supervisor of Planning  
Meg Vaughn, Staff Analyst

**SUBJECT:** Major Amendment Request No. 2-13 (LCP-5-LGB-13-0216-2 Wireless Communications Facilities, Chapter 25.55) to the City of Laguna Beach Certified Local Coastal Program, for Public Hearing and Commission Action at the March 8, 2017 meeting in Ventura.

## **SUMMARY OF LCP AMENDMENT REQUEST NO. 2-13**

Request by City of Laguna Beach to amend the Implementation Plan portion of the certified Local Coastal Program (LCP) to revise Chapter 25.55 (*Telecommunication Facilities*). Local Coastal Program Amendment Request No. 2-13 was submitted pursuant to City Council Resolution No. 13.052 which requests action on Ordinance No. 1579. The proposed amendment will affect Title 25 *Zoning* which is contained in the City's certified LCP Implementation Plan. The amendment is proposed to be consistent with recent federal legislation (Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act) which includes provisions to restrict local governments from imposing a discretionary process for certain modifications to telecommunication facilities that do not substantially change the physical dimensions of an existing wireless tower or base station and that involve co-location of new transmission equipment, or the removal or replacement of transmission equipment. More specifically, the proposed modifications to Chapter 25.55 (*Telecommunications*) are intended to clarify when discretionary review is required and when it is exempt pursuant to the Act cited above. In addition, the proposed amendment would replace the term "telecommunication" with the term "wireless communications" throughout Chapter 25.55, including in the Chapter title. Also, the proposed amendment would add, revise, and delete certain definitions, expand the current submittal requirements for review of wireless communication facilities that require discretionary review, establish a new requirement for expert review of proposals, establish new and specific development standards for wireless communication facilities, apply the Administrative Use Permit procedure to some wireless communication facilities requests, and add standards to Subsection 25.55.008 *Review Criteria/Standard Conditions*. The proposed LCP amendment does not alter the City's coastal development permit procedures. However, the federal Spectrum Act applies also to the Coastal Development Permit process. The Spectrum Act applies only to a very narrow range of wireless communications facilities which are described in Exhibit 3 (47 CFR sec. 1.40001). Only the Implementation Plan portion of the City's certified LCP is affected by the proposed amendment.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission certify LCP Amendment Request No. 2-13 with suggested modifications necessary to assure that protection of sensitive habitats, public access, public recreation, and public views is promoted; clarify when a coastal development permit may be required; and clarify four of

the proposed definitions. The motions and resolutions to carry out the staff recommendation are on **Pages Three and Four**. The suggested modifications to the LCP amendment request are attached as **Appendix A**.

The suggested modifications are also necessary to ensure that the LCP's requirements are consistent with currently applicable federal rules implementing the Spectrum Act. The proposed LCP amendment, if modified as suggested, will be consistent with the requirements of the City's certified LCP Land Use Plan (LUP), which is the standard of review.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the IP amendment request as submitted; and,**
- 2. Certify, only if modified, the IP amendment request.**

### **STANDARD OF REVIEW**

The standard of review for the proposed amendment to the LCP Implementation Plan (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP).

### **LOCAL REVIEW AND DEADLINE FOR COMMISSION ACTION**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states: *During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.*

The City of Laguna Beach Planning Commission held one public hearing and the City Council held two public hearings on the proposed amendment to Chapter 25.55 Wireless Communications Facilities: City Council 9/3/13; and 8/20/13; Planning Commission 7/10/13. In addition, 1/8<sup>th</sup> page notices were published in the local newspaper, the Laguna Beach Coastline Pilot on 8/9/13 (City Council Hearing Notice) and on 6/28/13 (Planning Commission Hearing Notice). No written comments were received during the City's review process. No one spoke at any of the hearings and no correspondence was received.

On September 20, 2013, the City submitted the LCP amendment request for Coastal Commission certification with City Council Resolution No.13.052. On October 4, 2013, Commission staff determined the submittal was incomplete and notified the City of that determination and identified the additional information necessary to deem the LCPA request complete. On March 14, 2016 the requested additional information was received from the City and the amendment request was deemed complete by Commission staff. On May 12, 2016, the Coastal Commission granted a request to extend the time limit for action for up to one year. Thus, the deadline for Commission action on the proposed amendment request is May 12, 2017.

### **FOR ADDITIONAL INFORMATION**

The file is available for review at the South Coast District office located in the Molina Center at 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Meg Vaughn or Charles Posner in the South Coast District office at (562) 590-5071.

**EXHIBITS**

1. City Council Resolution No. 13-052
2. City of Laguna Beach Ordinance No. 1579 (legislative draft highlighting proposed changes)
3. 47 CFR sec. 1.40001
4. FCC Order 14-153 (Attached online only at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1.pdf) )

**Appendix A** – Suggested Modifications: Chapter 25.55 *Wireless Communications Facilities* highlighting changes proposed by the City and modifications suggested by Coastal Commission staff.

**I. MOTIONS AND RESOLUTIONS**

**Motion I:**

*I move that the Commission **reject** the Amendment to the Implementation Plan for the City of Laguna Beach certified LCP as submitted.*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution I:**

*The Commission hereby denies certification of the Amendment to the Implementation Plan submitted for the City of Laguna Beach certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.*

**Motion II:**

*I move that the Commission **certify** the Amendment to the Implementation Plan for the City of Laguna Beach certified LCP if it is modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Amendment to the Implementation Plan with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution II:**

*The Commission hereby certifies the Amendment to the Implementation Plan for the City of Laguna Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program if modified as suggested*

*complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

## **II. SUGGESTED MODIFICATIONS**

**Appendix A** – Suggested Modifications: Chapter 25.55 *Wireless Communications Facilities* highlighting changes proposed by the City and modifications suggested by Coastal Commission staff.

## **III. FINDINGS**

The Commission hereby finds and declares:

### **A. AMENDMENT DESCRIPTION**

The City of Laguna Beach has requested an amendment to the Implementation Plan (IP) portion of the certified Local Coastal Program (LCP). The main document comprising the City's certified Implementation Plan is Title 25 *Zoning*, the City's Zoning Code, although the certified IP also includes other documents. The changes proposed to the City's certified IP pursuant to this amendment request affect only Title 25 and are reflected in City Council Resolution No. 13-052, which requests action on Ordinance 1579, Chapter 25.55 *Wireless Communications Facilities*. The proposed amendment modifies Chapter 25.55 *Wireless Communications* (to be renamed from *Telecommunications*) Facilities of the IP. Only Chapter 25.55 of the IP is proposed to be changed. The changes proposed under LCPA No. 2-13 (LCP-5-LGB-13-0216-2) are described in greater detail below.

The standard of review for the proposed amendment to the LCP Implementation Plan (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP). The City's certified LUP is comprised of a number of documents including the Coastal Element, the Land Use Element, the Open Space/Conservation Element, and the Coastal Technical Appendix.

The amendment was originally submitted on September 20, 2013. It was deemed incomplete and additional information was requested on October 4, 2013. The additional information was received and the amendment request was deemed complete on March 14, 2016. The delay in completing the application was due, in large part, to questions regarding what the City recognized as the Commission certified language of Chapter 25.55 versus what Coastal Commission records indicated. Once that issue was resolved, and a correct legislative draft reflecting this was received, the amendment request was deemed complete. The Commission extended the time limit to act on the amendment to May 12, 2017. In the time between when the amendment request was originally submitted and now, the federal government updated the federal law which generated the proposed amendment request. In order to conform to the federal law as updated, some modifications to the amendment are suggested.

The primary objective of the proposed amendment is to establish detailed permit procedures for wireless communication facilities projects because even seemingly minor projects might result in adverse impacts to, for example, public views, habitat, and/or public access and recreation, in addition to concerns regarding health, safety and welfare of citizens working and living in the City. This

amendment request was generated in response to the federal *Middle Class Tax Relief and Job Creation Act of 2012* (Act), more specifically with Section 6409-*Wireless Facilities Deployment* of that Act, which requires local and state governments to approve and not deny a request for wireless communication facilities (described further below). However, the 2012 Act did not preclude a local or state government agency from requiring and conditioning a permit for such development. Guidance provided by the Federal Communications Commission on this Section of the Act (DA 12-2047), states that Section 6409(a) “implies that the relevant government entity may require the filing of an application for administrative approval.” The City’s proposal reflects this guidance that a wireless facility request can be conditioned to meet certain criteria. The amendment would add fairly extensive standards to guide development of wireless communication facilities projects. In addition, the amendment establishes which types of wireless communications facilities projects would be exempt from needing a permit at all. The City proposes to accomplish protection of sensitive coastal and other resources by ensuring all wireless communication facility projects, except those limited projects specifically exempt from permit review by state or federal law, are reviewed to the appropriate level of detail necessitated by the scope of the project.

The City proposes to accomplish this by requiring Design Review and a Conditional Use Permit for each project, except those projects limited enough in scope to be exempt from either of these processes and/or as exempted by state or federal law. The City has proposed specific standards of exemption (described below). This more detailed review will allow the City to assess each project in order to identify and eliminate or minimize adverse impacts a project would otherwise have on significant coastal resources. To do this the City proposes to require design review and a conditional use permit where appropriate; and, where neither of these would be required, would require an Administrative Use Permit for all projects that do not require Design Review or Conditional Use Permits and are not otherwise exempted by state or federal law from the permit process. As proposed per subsection 25.55.006(C), “*all eligible facilities requests that do not require a substantial change in physical dimensions of a wireless communications facility are subject to the granting of an administrative use permit*”, unless exempted by state or federal law. The proposed amendment establishes specific requirements for all permits for wireless communication facilities, including Conditional Use Permits, Design Review, and Administrative Use Permits. The requirement for an Administrative Use Permit for wireless facilities is newly proposed by this amendment.

The changes proposed include identifying the appropriate permit that will be required with wireless communication facility proposals (e.g. Conditional Use Permit, Design Review, Administrative Permit, unless the project is exempt); adding a provision for an Administrative Permit for certain types of projects; adding new definitions including definitions for “eligible facilities request” and “substantial change in physical dimensions” which relate specifically to language in Section 6409(a). Because the Act does not provide definitions for these two terms, the City’s proposed definitions are intended to clarify what is meant by these terms as used in the Act and as implemented by the City. The City’s proposed definitions are intended to clarify the types of facilities for which local review is limited by the Act. Additional changes proposed include: updating the overall definitions section to modify, add or delete terms to better reflect current technology; greatly expand the section that identifies materials to be submitted with permit applications for wireless communications facilities; newly requires expert review of the project proposal when required by the director of community development; adds a new *Development Standards* section; adds a new section addressing *Administrative Use Permit for Wireless Communications Facilities*; newly requires that each wireless communication facility be identified by a permanently installed plaque or marker with contact information for the wireless carrier and/or the carrier’s agent; establishes maintenance responsibilities;

establishes standards for abandonment or discontinuance of the wireless communication facility; and, provides standards for relocation of the facilities in the event of facility abandonment, or change of grade, alignment or width of street, or sidewalk. The new section addressing *Administrative Use Permit for Wireless Communications Facilities* includes, among other subsections: application, noticing requirements, required findings, conditions of approval, and an appeal procedure; and adds to the review criteria/standard conditions a new setback requirement and new lighting requirement.

As previously stated, the proposed LCP amendment would establish a comprehensive permitting procedure for wireless communications facilities. Proposed revisions to Chapter 25.55 would make clear that all wireless communication facilities are subject to approval of the City's Design Review Process, a Conditional Use Permit, or an Administrative Permit unless the project is specifically exempted. Proposed sections 25.55.006(A) and (B) allow exemptions from Design Review and CUPs for:

- (1) *A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;*
- (2) *A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;*
- (3) *An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;*
- (4) *Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and*
- (5) *Any wireless communications facilities exempted from design review/conditional use permit by federal or state law.*

The City has indicated that the exemptions are intended to provide incentives for an applicant to hide a facility, construct the facility within an existing structure, and/or limit proposed changes to those that do not meet the definition of substantial change to an existing facility/structure.

For wireless facilities projects that are exempt (pursuant to the list 1 – 5 above) from the requirement to obtain Design Review and/or Conditional Use Permits, the proposed IP amendment would require an Administrative Use Permit for projects that do not result in a "*substantial change in physical dimensions*" of an existing wireless communication facility, unless the project is specifically exempted by federal or state law. "Substantial change in physical dimensions" is proposed to be defined as:

*"A change in the physical dimensions or configuration of a wireless communications facility that results in public safety, visual, noise or other impacts that are materially greater than those that would have existed if the wireless communications facility were installed as originally permitted. The determination whether or not the proposed modifications to a wireless communications facility constitute a substantial change in physical dimensions is context-based to be made by the director of community development or designee."*

Existing language to be retained in Section 25.55 prohibits such facilities in Environmentally Sensitive Areas (ESAs), restricts such facilities adjacent to ESAs, and requires that public views be protected (See Section 25.55.008 Review Criteria/Standard Conditions).

## **B. REJECTION OF AMENDMENT NO. 2-13 AS SUBMITTED**

As proposed, the Implementation Plan amendment is inconsistent with and inadequate to carry out the provisions of the certified Land Use Plan portion of the LCP regarding protection of sensitive habitat, public views, and public access and recreation. As proposed, Section 25.55.006 *Permits Required* section of the IP amendment does not make clear that the procedures applicable to processing Conditional Use Permits, Design Review, or Administrative Permit for wireless facilities will have no affect on when a Coastal Development Permit is required. Instead, as proposed, it appears that a CDP may only be required when a CUP is required. Also as proposed, the definition for “*preferred location*” for placement of wireless communication facilities makes it appear that the preferred location would always be within a commercial or industrial zone. As proposed, this definition does not recognize that under certain circumstances it may be more protective of coastal and other resources to locate the facility in a different zone (not including the Open Space/Conservation zone). In addition, the proposed definitions for “*permittee*” and “*public-right-of-way*” are unclear. These issues with the proposed IP amendment make it inconsistent with and inadequate to carry out the provisions of the certified LUP and therefore the amendment must be denied as submitted. However, if modified as suggested below, the amendment can be found to be consistent with and adequate to carry out the policies of the certified LUP. The basis for denial of the IP amendment as submitted and discussion of how the suggested modifications are necessary to bring the amendment into conformance with the LUP are described in greater detail below.

In addition, changes in federal law (47 CFR sec. 1.40001) enacted subsequent to the submission of this LCP amendment and which affect the enforceability of certain provisions in the LCP amendment as proposed by the City, render the City’s proposed changes inconsistent with federal law. With this understanding, the LCPA is rejected in order for the Commission to suggest the necessary changes intended to make the proposed amendment consistent with this current federal law.

## **C. APPROVAL OF AMENDMENT NO. 2-13 IF MODIFIED AS SUGGESTED**

### **Consistency with Recent Federal Law**

The majority of the modifications suggested are not strictly necessary to ensure consistency with the certified Land Use Plan per se, but are necessitated by changes in federal law (47 CFR sec. 1.40001) enacted subsequent to the submission of this LCP amendment and which affect the enforceability of certain provisions in the LCP amendment as proposed by the City. With this understanding, the suggested modifications driven by the changes in federal law are intended to make the proposed amendment consistent with this current federal law.

As described earlier, the genesis for the LCP amendment was to provide standards whereby the City could implement Section 6409 of the *Wireless Facilities Deployment* of the federal *Middle Class Tax Relief and Job Creation Act of 2012* (otherwise known as the Spectrum Act, codified at 47 USC sec. 1455) in a manner most protective of public health and safety, and coastal resources including protection of sensitive habitats, public views, and public access and recreation. The Spectrum Act was enacted by Congress in 2012 with the broad purpose of expediting certain types of wireless facility deployments with limited local and State government oversight as means of stimulating economic activity. The City’s amendment that was proposed to process permit applications relating to wireless facilities in response to that law, which contains a number of undefined terms of art, was submitted for Commission action in 2013. However, in the interim between the time the LCPA was submitted (September 2013) and the time the information necessary to complete the amendment request was



received (March 2016), the Federal Communications Commission (FCC), the federal agency charged with implementing the Spectrum Act, issued an order on October 14, 2014 (FCC Order 14-153) which promulgated new regulations that took effect on January 8, 2015 (47 CFR sec. 1.40001). The effect of Order 14-153 and 47 CFR sec. 1.40001 is that 47 CFR sec. 1.40001 further implements Section 6409 of the Spectrum Act, and Order 14-153 provides background explanation as to how the new rule should be interpreted.

For example, the Spectrum Act established that a request for approval of changes that *do not constitute a substantial change in physical dimensions* of an existing wireless communication facility, could not be denied and must be approved (*see* 47 USC § 1455(a)); however the 2012 law did not define a “substantial change in the physical dimensions,” the trigger for when the law becomes applicable. This resulted in wide variance in local and State actions undertaken to comply with this provision (such as the City’s currently proposed LCP amendment), which resulted in the FCC promulgating 47 CFR sec. 1.40001 to standardize local and State implementation of Section 6409(a) of the Spectrum Act in order to achieve its policy goal of expedited rollout of certain types of wireless facility deployments. As a consequence, some aspects of the City’s proposed amendment, though consistent with the law at the time the amendment was submitted, now appear to be in conflict with the new federal rule, which appears to be comprehensive and to have preemptive effect. In order to remedy this situation, modifications are suggested to conform the LCP amendment to current federal rules which implement Section 6409 of the Spectrum Act (*see* Appendix A).

In short, 47 CFR sec. 1.40001 defines a number terms used in Section 6409 of the Spectrum Act which the LCP amendment attempts to define (including “co-location,” “eligible facilities request,” and “substantial change”) as well as a number of other terms of art used in Section 6409 of the Spectrum Act which had been undefined and not proposed for definition in the LCP amendment (including “base station,” “eligible support structure,” “existing,” “site,” “transmission equipment,” and “tower”). Perhaps most importantly, subsection (c) of 47 CFR sec. 1.40001 states: “A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.” Subsection (c)(1) then specifies what documentation a State or local government may request of an applicant asserting coverage under 47 CFR sec. 1.40001 (“documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section”); subsection (c)(2) specifies a 60-day period for approving an application covered by 47 CFR sec. 1.40001; subsection (c)(3) specifies circumstances for tolling the timeframe for review; subsection (c)(4) provides “deemed granted” status for failure of a State or local government to timely review an application; and subsection (c)(5) sets forth remedies for review of claims relating to Section 6409 of the Spectrum Act.

While staff is recommending retaining most of the City’s language as proposed where it applies to wireless communication facilities projects that rise to the level of needing a conditional use permit and/or design review approval<sup>1</sup>, many of the modifications driven by the new federal rules are suggested to modify or eliminate requirements that are proposed to apply to projects that do not rise to either level. These types of projects appear to be comprehensively covered by 47 CFR sec. 1.40001, namely “eligible facilities requests for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base” as those terms are defined in 47

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<sup>1</sup> The proposed amendment would make no change to the coastal development permit procedure, which is described in Chapter 25.07 *Coastal Development Permits* section of the certified Implementation Plan.

CFR sec. 1.40001. Regarding the comprehensive and preemptive effect of 47 CFR sec. 1.40001, FCC Order 14-153 explains that, “as to applications covered by Section 6409(a), State and local governments may continue to enforce and ***condition approval on compliance with non-discretionary codes*** reasonably related to health and safety, including building and structural codes.” (FCC Order 14-153 at ¶ 214, fn. 595 (emphasis added).) Furthermore, FCC Order 14-153 further explains: “These limitations serve to ***preempt the operation of state law*** ... They do not require State or local authorities to review wireless facilities siting applications, but rather preempt them from choosing to exercise such authority under their laws other than in accordance with Federal law – *i.e.*, to deny any covered requested.” (*Id.* at ¶ 214, fn. 595 (emphasis added).)

Therefore, for the specific types of projects to which 47 CFR sec. 1.40001 applies, conditions of approval may only be applied when they are based solely on non-discretionary code requirements (such as health and safety, including building and structural codes). Likewise, review criteria may only be required as necessary to conform a proposed project to the non-discretionary code requirements. As proposed, the City’s amendment is not fully consistent with these aspects of the Spectrum Act and 47 CFR sec. 1.40001. In attempting to remedy this, much of the proposed section on the requirements for Administrative Permits for Wireless Communications Facilities (which was the City’s attempt to implement Section 6409 of the Spectrum Act before the FCC provided additional regulatory guidance through 47 CFR sec. 1.40001) is suggested for deletion or significant curtailment because, per 47 CFR sec. 1.40001(c), for these limited types of projects, conditions, review criteria, or required findings cannot be imposed if they are based upon discretionary code requirements and in conflict with the terms of 47 CFR sec. 1.40001. The preemptive effect of 47 CFR sec. 1.4001 makes sense as a mechanism for ensuring that projects covered by Section 6409 of the Spectrum Act are expedited for approval in furtherance of the Act’s policy of boosting economic activity.

The suggested modifications would also delete the proposed definitions that are already defined in 47 CFR § 1.40001(b) for purposes of implementing Section 6409 of the Spectrum Act. In addition, some of the suggested modifications would provide a mechanism simply to let the federal rules apply.

The majority of the suggested modifications are intended to address these issues in order to conform the City’s proposed ordinance to now-existing federal law. It should be noted that the proposed LCP amendment does not alter the City’s coastal development permit procedures. However, the federal Spectrum Act applies also to the Coastal Development Permit process. The Spectrum Act applies only to a very narrow range of wireless communications facilities which are described in Exhibit 3 (47 CFR sec. 1.40001). Other than these suggested modifications, only four additional modifications are suggested. The four additional suggested modifications are described below.

#### **Consistency with the Certified Land Use Plan**

The standard of review for amendments to an Implementation Plan portion of a certified Local Coastal Program (LCP) is conformity with the Land Use Plan portion of the certified LCP. Typically, concerns raised by Wireless Communications Facilities are related to potential impacts to public views sensitive habitat, and/or public access and recreation. The City’s certified Land Use Plan *Open Space/Conservation Element* contains the following policies regarding protection of public views and protection of habitat:

- 7A *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.*

- 7K *Preserve as much as possible the-natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require recontouring and replanting where the natural landscape has been disturbed.*
- 8A *Preserve the canyon wilderness throughout the City for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.*
- 8C *Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*
- 8L *Preserve and protect fish and wildlife species for future generations.*
- 13B *Require that development proposals, including additions and alterations to existing buildings, incorporate protection of the natural profile of ridgelines as visual resources.*
- 13C *Discourage ridgeline development in order to protect highly visible and exposed portions of the ridgeline, including outstanding physical features, such as rock outcroppings, vertical slopes and caves, and study the feasibility of prohibiting development on the prominent ridgelines.*
- 13H *Preserve public views of coastal and canyon areas from ridgelines.*

In addition, the City's certified Land Use Plan *Land Use Element* includes the following policies regarding public access and recreation, public views, and sensitive habitat:

- Policy 4.3 *Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.*
- Policy 6.9 *Provide public access to designated public areas wherever safe and legally and environmentally appropriate.*
- Policy 7.3 *Design and site new development to protect natural and environmentally sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.*

As proposed to be amended, Chapter 25.55 will retain the following requirements (numbering cited below reflects numbering changes due to the proposed amendment; however, the language cited is currently contained within the certified version of Chapter 25.55):

25.55.008 Review Criteria/Standard Conditions

(A) *Zoning Compliance. Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting wireless communications facilities are strongly discouraged in residential zones or adjacent to schools.*

(C) *Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.*

(D) *Aesthetics. . . . Aesthetic visual impacts shall include consideration of public views, including but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. . . .*

(E) *Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs is prohibited.*

The following suggested modifications are necessary to carry out the provisions of the certified LUP:

Language of the currently certified Chapter 25.55 is shown in plain text.

The City's proposed additions are shown in underlined text.

The City's proposed deletions are shown in ~~strike out text~~.

The Commission's suggested additions are shown in ***bold, italic, underlined text***.

The Commission's suggested deletions are shown in ***bold, italic, underlined, strike out text***.

## **Protection of Coastal Resources Coastal Development Permit Required**

### **Suggested Modification**

25.55.006 Permits required.

***In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remains applicable.***

(A) ~~Telecommunications~~ Wireless Communications Facilities Subject to Design Review.

...

(B) ~~Telecommunications~~ Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all ~~telecommunications~~ wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. ***An associated coastal development permit may also be required pursuant to Chapter 25.07.*** ...

...

As proposed, Section 25.55.006 *Permits Required* references the potential need to obtain a coastal development permit only under the Conditional Use Permit (CUP) requirements (Section

25.55.006(B)). However, even if a wireless communication facility does not rise to the level of a CUP, it is still possible that a Coastal Development Permit (CDP) may be required, as described in Chapter 25.07 *Coastal Development Permits*. For example, in the case of an otherwise seemingly minor development that, due to its location on a beach, in a stream, within 100 feet of a wetland, or within 50 feet of a coastal bluff, raises the increased possibility of adverse environmental impact. In such cases the need to obtain a CDP is triggered (pursuant to Section 25.07.004 *Coastal Development Permit Required*). Thus, regardless of whether a wireless communication facility would require a Conditional Use Permit, Design Review or an Administrative Permit, it is nevertheless possible that the project may also require approval of a Coastal Development Permit. Chapter 25.07 *Coastal Development Permits* of the certified IP, establishes when a CDP is required, and so regardless of the language in Chapter 25.55 *Wireless Communication Facilities*, Chapter 25.07 would define when a CDP is required. However, as proposed, Section 25.55.006(B) may create the erroneous impression that only when a wireless communication facilities project needs a CUP, might a CDP also be required. It should be clear that regardless of which type of additional City permit is required for the wireless communications facility project, the project should also be evaluated for the need to obtain a CDP as well. Proposed language appears to imply that only when a CUP is required might a CDP also be necessary. This may cause projects that should be subject to CDP review to omit that requirement. Consequently, applicable LUP polices may not be applied to project review during permitting and so the amendment as proposed cannot be found to be consistent with or adequate to carry out the policies of the certified Land Use Plan (LUP) and therefore must be denied. Staff is recommending a modification that would move the language regarding the potential need to obtain a coastal development permit from the subsection on CUPs to the beginning of the *Permits Required* section. If the amendment is modified to make it clear that, regardless of which type of additional permit may be required, the standards for when a CDP is required also apply, the amendment can be found to be adequate to carry out the policies of the certified LUP. Only if modified as recommended can the proposed amendment be found to be consistent with and adequate to carry out the policies of the certified LUP.

### **Definitions**

Of the many changes or additions proposed to Section 25.55.004 *Definitions*, most will update language to better reflect current technology, provide clarity or better specificity, and/or assist in implementing the required permits. The majority of the changes proposed to the definitions section raise no issue with regard to consistency with and adequacy to carry out the policies of the certified Land Use Plan (including those cited above). However, three of the proposed definitions do raise issues. Of the three definitions where staff is recommending modifications, only one is substantial in nature (*Preferred Location*) and two just need minor, but necessary clarifications (*Permittee* and *Public right of Way*).

#### **Suggested Modification:**

“Preferred Location” means *sites with no or minimal impacts to sensitive habitat, public views, and public access and recreation; commercial and industrial zone locations are preferred over locations in other zones except when such location would result in greater impacts.*”

As proposed, the definition for “preferred location” suggests that placing a wireless communication facility in a commercial or industrial zone would always be preferred over other zones. While it is likely that locating facilities in these zones would have reduced impacts compared to other zones

generally, it is possible that in specific circumstances, locating a facility in a zone other than commercial or industrial may actually result in reduced impacts. For example, if an industrial or commercial zone is located adjacent to open space or includes undeveloped portions where sensitive habitat has established, placement in this zone may result in adverse impacts to habitat even though the placement would be in the preferred zone. This may be the case in some industrial zoned areas of Laguna Canyon, for example. This is also true with regard to impacts to public views or to public access or recreation. Locating a facility in either an industrial or commercial zone may create adverse impacts that could be avoided or reduced if placed in a more suitable location even if the revised location is not a commercial or industrial zone. Impacts to be considered include, in addition to impacts to sensitive habitat, impacts to public views, public access, or public recreation.

Section 25.55.008 *Review Criteria/standard conditions*, subsection (A) *Zoning Compliance*, specifically prohibits placement of a facility in an Open Space/Conservation zone. The intent of the suggested modification is to recognize that the primary goal of “*preferred location*” is to avoid adverse impacts to coastal resources, including sensitive habitat, public views and public access and recreation. The suggested modification is intended to maintain a preference for locating facilities in commercial or industrial zones, while recognizing that in specific instances, placement in another type of zone (not to include Open Space/Conservation) may actually result in reduced impacts and so actually may be the preferred location. Unless modified as suggested, the proposed “preferred location” definition may not actually reflect the location with fewest adverse impacts to significant resources (including habitat, public views, public access and public recreation). As proposed, the definition would not do this, and so the amendment cannot be found to be consistent with and adequate to carry out the policies of the LUP, and therefore must be denied as submitted. However, if the definition were modified as suggested, the definition for “preferred location” would assure that the location most protective of sensitive resources is the preferred location. Only if modified as recommended can the proposed amendment be found to be consistent with and adequate to carry out the policies of the certified LUP.

**Suggested Modification:**

“Permittee” means any person, persons or entity, including the city, who owns any **wireless communication** facility or facilities **including, but not limited to, those** that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.

As proposed the definition for “permittee” does not specify that the facility in question is a wireless communication facility and appears to imply that only persons pursuing wireless communication facilities located in public rights of way could be permittees. However, a wireless communication facility may be located other than in a public right-of-way, such as when attached to an existing structure for example, or it may be located on private property. The suggested modification would clarify that the type of project in question would be not just any facility, but specifically a wireless communication facility. The suggested modification would also clarify that a permittee may be a person, persons, or entity with a wireless project located in places in addition to the public right-of-way.

**Suggested Modification:**

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, **county or state** or is subject to an easement or

dedication to the city, *county or state* or is a privately owned area within the city's, *county's or state's* jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city."

As proposed the definition for "public-right-of-way" would be limited to public rights of way owned, operated, or controlled only by the City. However, public rights-of-way may also be held by the County or State. This should be recognized in the definition in order to make clear that all wireless communication facilities proposed within public-rights-of-way would be subject to the standards and requirements of Chapter 25.55 *Wireless Communication Facilities*. The suggested modification would clarify that public-rights-of way are not limited to only those held by the City, but would also include those held by the County and State. Unless modified as suggested these two definitions would create confusion, hampering the ability to implement the proposed wireless communication standards and requirements of Chapter 25.55 of the certified IP consistent with the policies of the LUP. Therefore, as proposed, the amendment must be denied. However, if modified as suggested, the proposed amendment can be found to be consistent with and adequate to carry out the policies of the certified LUP.

#### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing environmental review documentation in connection with its activities and approvals necessary for the preparation and adoption of an LCP. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Thus, under Section 21080.5 of CEQA, the Commission's review and analysis of the LCP amendment in this staff report satisfies CEQA environmental review requirements. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Laguna Beach LCP Amendment No. 2-13 consists of an amendment to the Implementation Plan (IP) of City's certified LCP.

As outlined in this staff report, the proposed LCP Amendment if modified as suggested will be consistent with the policies of the LUP. Thus, the Commission finds that the LCP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LCP. Therefore, the Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Furthermore, as modified, there are no other feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the LCP amendment may have on the environment.

# APPENDIX A

City of Laguna Beach LCP Amendment No. 2-13 (LCP-5-LGB-13-0216-2 Wireless Communications)  
Due to the extent of the changes proposed by the City and the modifications suggested by Commission staff, the entire Chapter 25.55 is included to better understand the context of the changes.  
Changes in numbering resulting from the suggested modifications in the final document may be made, as appropriate.

## II. SUGGESTED MODIFICATIONS

Certification of City of Laguna Beach LCP Amendment Request No. LCP-5-LGB-13-0216-2 is subject to the following modifications.

Language of the currently certified Chapter 25.55 is shown in plain text.

The City's proposed additions are shown in underlined text.

The City's proposed deletions are shown in ~~strike out text~~.

The Commission's suggested additions are shown in ***bold, italic, underlined text***.

The Commission's suggested deletions are shown in ***bold, italic, underlined, strike out text***.



**Chapter 25.55 TELECOMMUNICATIONS  
WIRELESS COMMUNICATIONS FACILITIES**

25.55.002 Intent and purpose.

The following regulations shall apply throughout the city. These standards-regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, and to preserve the aesthetic values and scenic qualities of the city without prohibiting any entity or , and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws.

25.55.004 Definitions.

“Agent” means a person(s) from providing authorized to act on behalf of a permittee or other person or receiving telecommunications service. (Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996)-entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

“Amateur (ham) radio antenna” means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person’s hobby.

~~“Antenna” means a device used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based systems.~~

“Antenna” means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

“Antenna support” means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

“Array” means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting antennas ~~made prior to a permit application for such facilities. in operation.~~

~~“CarrierCable” means any company that is engaged in the provision wire typically consisting of a communication copper, coax or fiber used for utility service purposes.~~

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site and as more specifically defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Directional antenna” typically means a panel—~~or rectangular~~ antenna used to achieve transmission or reception in a specified direction.

“Duplexer” means a combining device that allows a transceiver to use a single antenna for both transmitting and receiving.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Eligible facilities request” means a request for modification of an existing wireless tower or base station that involves (a) co-location of a new transmission equipment, (b) removal of a transmission equipment, or (c) replacement of transmission equipment.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from the existing grade any point at the base of the antenna or, in the case of a roof mounted antenna, from the highest point of grade at the exterior base of the building to the highest point of the antenna and any associated support/or ancillary wireless communication structure when fully extended, to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

“Monopole tower/Tower” means a ~~tubular~~ antenna support structure typically made of steel, wood or concrete.

“Monorock” means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

“Monoshrub/monotree” means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

“Omnidirectional antenna” means an antenna used to achieve transmission or reception in all directions.

“Parabolic antenna” means a specialized antenna that has a ~~circular~~ curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

“Permittee” means any person, persons or entity, including the city, who owns any wireless communication facility or facilities including, but not limited to, those that are or are proposed to be

installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.

“Preferred location” means *sites with no or minimal impacts to sensitive habitat, public views, and public access and recreation; commercial and industrial zones locations are preferred over locations in other zones except when such location would result in greater impacts.*

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts ( $10^{-3}$  watts) or microwatts ( $10^{-6}$  watts), per unit area, usually centimeters squared.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, *county or state* or is subject to an easement or dedication to the city, *county or state* or is a privately owned area within the city’s, *county’s or state’s* jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of ~~electromagnetic waves of electric and magnetic energy~~ moving together through space radiating from a transmitting device to a receiving device to achieve wireless ~~communication~~ communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

~~“Telecommunication facility” means a land use that sends and/or receives radio frequency signals, including but not limited to directional, omnidirectional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, accessory development and structures, and the land or structure on which they are all situated. It does not include mobile transmitting devices, such as vehicle or hand held radios/telephone and their associated transmitting antennas.~~

~~“Substantial change in physical dimensions” as that term is defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act. means a change in the physical dimensions or configuration of a wireless communications facility that results in public safety, visual, noise or other impacts that are materially greater than those that would have existed if the wireless communications facility were installed as originally permitted. The determination whether or not the proposed modifications to a wireless communications facility constitute a substantial change in physical dimensions is context-based to be made by the director of community development or his/her designee.~~

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments.

25.55.006 Permits required.

**In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remain applicable.**

(A) ~~Telecommunications~~ Wireless Communications Facilities Subject to Design Review. All ~~telecommunication~~ wireless communications facilities, unless specifically exempted, are subject to ~~Design Review Board~~ design review and approval, as provided for in Section 25.05.040. ~~Telecommunication~~ Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district; ~~and~~
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not **require result in** a substantial change in physical dimensions to a wireless communications facility **as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law;** and
- (5) Any wireless communications facilities exempted from design review by federal or state law.

(B) ~~Telecommunications~~ Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all ~~telecommunications~~ wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. ~~**An associated coastal development permit may also be required pursuant to Chapter 25.07.**~~ ~~Telecommunications~~ Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following ~~classes of satellite antennas~~ wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (5) Eligible facilities requests that do not **require result in** a substantial change in physical dimensions to a wireless communications facility **as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law;** and
- (6) Any wireless communications facilities exempted from conditional use permit review by federal or state law.

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not **require result in** a substantial change in physical dimensions of a wireless communications facility **as specified in 47**

U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law, are subject to the granting of an administrative use permit provided for in Section 25.55.007. ~~In addition to such conditions as may be imposed pursuant to Section 25.55.007, all wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.~~

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for ~~a design review,~~ and/or conditional use permits ~~application which proposes any telecommunication facility that contains transmitting antenna(s),~~ permits and/or administrative use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), ~~the~~ shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or his/her designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating (i) existing base level radio frequency (RF) radiation, the maximum radio frequency (RF) radiation, (ii) the maximum radio frequency (RF) radiation, (iii) the Effective Radiated Power (ERP) effective radiated power per channel and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectored antenna at the proposed site shall be provided. ;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;
- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless communications facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;

- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;
- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility; and
- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development.
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or his/her designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation, **except to the extent as preempted by federal law**. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;
- (6) The applicability of analysis techniques and methodologies;

- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, ~~and conditional use permit~~ ~~and administrative use permit~~ applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, ~~or conditional use permit~~ ~~or administrative use permit~~;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:
  - (a) For Structure Mounted Installations (excluding monopole installations):
    - (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominate color of the mounting structure;
    - (ii) When required by the director of community development or his/her designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and
    - (iii) Wireless communications facility installations located above the surface grade in the public right-of-way including, but not limited to those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.
  - (b) For Monopole Tower Installations:
    - (i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
    - (ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;

- (iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or his/her designee may require additional measures designed to camouflage a wireless communications facility, including but not limited to enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and
- (iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.
- (c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- (d) For Co-locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or his/her designee.
- (e) For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is menu of potential screening techniques that should be utilized based on the type of installation:

  - (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
  - (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and



- (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating.

22.55.007 Administrative Use Permit For Wireless Communications Facilities.

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit ~~may~~can be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. ~~Grants of administrative use permits for~~Approval of such facilities requests is required by ~~the~~ Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, *otherwise known as the Spectrum Act*, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012) and subsequently adopted FCC rules intended to implement Section 6409 of the Spectrum Act, specifically including 47 C.F.R. section 1.40001. This section sets forth procedures through which standard conditions and site-specific conditions may be imposed to ensure that such facilities are compatible and harmonious with adjacent or nearby permitted uses, and in accord with existing conditions of the neighborhood site, topographic and street conditions.

(B) Procedure. Granting of Aadministrative use permits for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facilities shall be subject to the procedures specified in 47 C.F.R. 1.40001. ~~this Section 22.55.007, which procedures shall supersede those set forth in Section 25.05.020.~~

(C) Application. Application for an administrative use permit shall be made by a property owner or agent. Applications shall provide the information required by Section 25.55.006(D), and such other information as prescribed by the director of community development or his/her designee.

(D) Timing of Approvals. The director community development or his/her designee shall review administrative use permit applications within such times as are required by state and federal law.

(E) Noticing Requirements. Public notice of a determination of an administrative use permit for wireless communications facility(ies) shall be distributed within five (5) business days after the administrative determination to grant such a permit. The public notice shall be mailed to those specified in Section 25.05.065(D)(1) through (9). The content of the notice shall be as specified Section 25.05.065(C)(3) through (8) and the following:

(1) Date of administrative determination to grant the administrative use permit;

(2) Name of the director of community development or his/her designee approving the administrative use permit;

(F) Findings. Prior to issuance of an administrative use permit the community development director or his/her designee shall make all of the following findings:

(1) All notification requirements have been met;

(2) The proposed use will have no substantial adverse effect upon abutting property;

(3) The proposed use is consistent with the objectives and policies of the city's general plan;

(4) The conditions stated in the administrative use permit are deemed necessary to protect the public health, safety and general welfare;

~~(5) To the maximum extent reasonably feasible, the proposed wireless communications facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site;~~

~~(6) The wireless communications facility has been conditioned to comply with the development standards set forth in Section 25.55.006(G); and~~

~~(7) For wireless communications facilities within the public right-of-way:~~

~~(a) The proposed use is permitted in the public right-of-way and complies with all applicable provisions of the Municipal Code;~~

~~(b) The proposed wireless communications facility will not interfere with the use of the public right-of-way and existing improvements and utilities thereon;~~

~~(c) The proposed wireless communications facility will not physically or visually interfere with vehicular, bicycle, and/or pedestrian use of streets, intersections, bicycle lanes, driveways, sidewalks and/or walkways; and~~

~~(d) The proposed wireless communications facility and its location will comply with the Americans with disabilities Act.~~

(G) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall be limited to those conditions reasonably related to non-discretionary codes such as Health and Safety, Building, and Structural codes. include:

~~(1) All conditions as are necessary and appropriate to allow the director of community development or his/her designee to make the findings required by Section 25.55.007(F);~~

~~(2) All conditions required by Sections 25.55.006(G) and 25.55.008;~~

~~(3) That the right to use an administrative use permit shall be contingent upon the fulfillment of all general and special conditions imposed by the administrative use permit;~~

~~(4) That all conditions on the administrative use permit shall constitute restrictions running with the land and shall be binding upon the owner of the land and the successors or assigns;~~

~~(5) That all conditions on the administrative use permit shall be consented to in writing by the applicants and all owners of interests in the land;~~

~~(6) That the administrative use permit, together with all consent forms, shall be recorded by the clerk-recorder of Orange County;~~

~~(7) That the administrative use permit shall be subject to review at any time upon receipt of a written complaint. The director of community development may require a reconsideration of the permit at the end of a specified time period from the date of the original approval, which reconsideration shall take account of at least the following factors: conformance with all conditons of approval, operation of the facility in its intended manner, and conformance with all applicable laws, regulations, standards and updates thereof, including radio frequency emissions and toxic or hazardous materials;~~

~~(8) The permittee shall provide certifications in accordance with Sections 25.55.008(F) and 25.55.008(G);~~

~~(9) The permittee shall submit as-built drawings confirming that the wireless communications facility has been constructed in substantial compliance with the approved plans and permit(s);~~

~~(10) The permittee shall not use, generate, store, or dispose of any hazardous materials on, under, about or within wireless communications facility in violation of any law or regulation; and~~

~~(11) Such further conditions of approval of the administrative use permit have been safety impacts.~~

~~(H) Appeals. Appeals are subject to the provisions of Section 25.05.070; provided, however, that the date “of decisions, determinations and requirements” (as that phrase is used in Section 25.05.070(B)(2)) shall be the date upon which all noticing requirements as specified in Section 25.55.007(E) have been completed. Notwithstanding any other provision of this Code, if the applicant contends that any requirement imposed pursuant to this Chapter 25.55 violates state or federal law, the applicant shall use the appeal process to seek administrative relief from such requirements. Such administrative relief may be granted by the City Council, if the City Council determines that the failure to grant administrative relief would result in a violation of state or federal law. The scope of the City Council’s authority on appeal of the grant of an administrative use permit for a wireless communications facility shall be limited if, and to the extent, required by state or federal law.~~

~~(I) Revocations. Revocations are subject to the provisions of Section 25.05.075.~~

~~(J) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except pursuant to a subsequent administrative use permit as might otherwise be required or granted pursuant to the terms of this Chapter.~~

### **25.55.008 Review criteria/standard conditions.**

(A) Zoning Compliance. ~~Telecommunications~~Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting ~~telecommunications~~wireless communications facilities are most appropriately located in ~~commercial and industrial zones~~ and are strongly discouraged in residential zones or adjacent to schools.

(B) Height. ~~Telecommunications~~Wireless communications facilities shall be ~~restricted~~limited to a maximum height of thirty-six feet ~~above the highest point of grade~~ as defined in Section 25.51.002(A)-55.004 - Definitions “Height.” The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower. ~~Telecommunications~~Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height; if the installation is located entirely within the structure’s physical limits or “envelope” and the structure’s exterior appears to remain unchanged. ~~Telecommunications~~Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height; if such installation adds no more than ten-~~(10)~~ inches of horizontal width to a structure’s vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to ~~telecommunication~~wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the ~~Design Review Board~~design review board.

(D) Aesthetics. The ~~City's~~city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed ~~telecommunications~~wireless communications facility's aesthetic visual impact, the ~~Design Review Board~~design review board or director of community development or his/her designee may request that alternative designs be developed and submitted for ~~the board's~~ consideration. Aesthetic visual impact review shall include consideration of public views, including but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of ~~telecommunications~~wireless communications facilities is desirable, but there shall not be an unsightly proliferation of ~~telecommunications~~wireless communications facilities on one site, which adversely affects community scenic and ~~economicaesthetic~~aesthetic values.

(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a ~~telecommunications~~wireless communications facility, which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the ~~City~~city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the ~~City~~city at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified; and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the ~~telecommunications~~wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the ~~City~~city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The ~~Planning Commission~~director of community development or his/her designee shall periodically review the approved ~~telecommunications~~wireless communications facility sites and determine if testing is necessary. Approved ~~telecommunications~~wireless communications facility providers shall be notified of all such ~~Planning Commission determination hearings~~director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying the addresses, email contact information, and 24-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

- (1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility in the public right of way must be removed within 48 hours of notification.
- (2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
- (3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.
- (4) All wireless communications facility sites shall be kept clean and free of litter.
- (5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and 24-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

- (1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty (60) days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety (90) days shall be considered abandoned.
- (3) For wireless communications facilities in the public right-of-way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in

accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.

- (4) For wireless communications facilities in the public right-of-way, at any time after ninety (90) days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-located portion thereof, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement Cost Recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

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RESOLUTION NO. 13.052

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA ADOPTING LOCAL COASTAL PROGRAM AMENDMENT 13-1213 REGARDING MUNICIPAL CODE CHAPTER 25.55 (WIRELESS COMMUNICATIONS FACILITIES) AND REQUESTING ITS CERTIFICATION BY THE COASTAL COMMISSION.

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WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Planning Commission of the City of Laguna Beach held public hearings to consider the adoption of Laguna Beach Local Coastal Program Amendment No. 13-1213, and such amendment was recommended to the City Council for adoption; and

WHEREAS, the City Council after giving notice as described by law, held at least one public meeting regarding the proposed Laguna Beach Local Coastal Program Amendment No. 13-1213, and the City Council finds that the proposed amendment is consistent with the Certified Laguna Beach Coastal Land Use Plan and Chapter 6 of the California Coastal Act; and

WHEREAS, the City Council of the City of Laguna Beach intends to implement the Local Coastal Program in a manner fully consistent with the California Coastal Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES RESOLVE AND ORDER as follows:

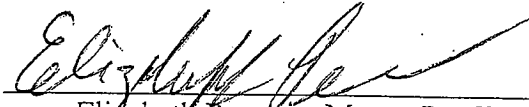
SECTION 1. That Laguna Beach Local Coastal Program Amendment No. 13-1213 is hereby approved, consisting of an amendment to the Wireless Communications Facilities provisions of Municipal Code Chapter 25.55. A copy of the aforesaid ordinance is attached hereto as Exhibit "A" and is incorporated by reference as though fully set forth herein.

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SECTION 2. That the California Coastal Commission is hereby requested to consider, approve and certify Local Coastal Program Amendment 13-1213.

SECTION 3. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Laguna Beach Local Coastal Program Amendment No. 13-1213 will take effect automatically upon Coastal Commission approval, as provided in Pubic Resources Code Sections 30512, 30513 and 30519.

ADOPTED this 3<sup>rd</sup> day of September, 2013.

  
Elizabeth Pearson, Mayor Pro Tem

ATTEST:

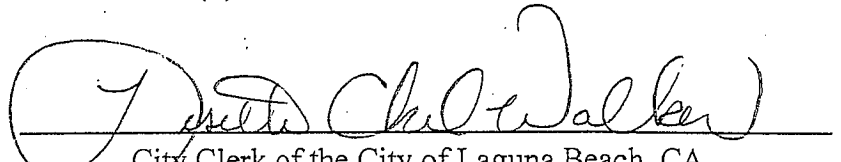
  
City Clerk

I, LISETTE CHEL-WALKER, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 13.052 was duly adopted at a Regular Meeting of the City Council of said City held on September 3, 2013, by the following vote:

AYES: COUNCILMEMBER(S): Whalen, Dicterow, Boyd

NOES COUNCILMEMBER(S): Iseman

ABSENT COUNCILMEMBER(S): Pearson

  
City Clerk of the City of Laguna Beach, CA

EX-1  
page 2



~~ORDINANCE NO. 1579~~

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA AMENDING LAGUNA BEACH MUNICIPAL CODE CHAPTER 25.55 RELATING TO WIRELESS COMMUNICATIONS FACILITIES.**

The City Council of the City of Laguna Beach does hereby ORDAIN as follows:

**SECTION 1:** Chapter 25.55 ("Telecommunication Facilities") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

**Chapter 25.55  
WIRELESS COMMUNICATIONS FACILITIES**

**Sections:**

- 25.55.002 Intent and Purpose.**
- 25.55.004 Definitions.**
- 25.55.006 Permits Required.**
- 25.55.007 Administration Use Permit for Wireless Communications Facilities**
- 25.55.008 Review Criteria/Standard Conditions.**

**25.55.002 Intent and Purpose.**

The following regulations shall apply throughout the city. These regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, preserve the aesthetic values and scenic qualities of the city, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws.

**25.55.004 Definitions.**

"Agent" means a person authorized to act on behalf of a permittee or other person or entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

"Amateur (ham) radio antenna" means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person's hobby.

"Antenna" means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception

of electromagnetic waves, including antennas relating to personal wireless services as defined by the federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

“Antenna support” means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

“Array” means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting antennas in operation.

“Cable” means any wire typically consisting of copper, coax or fiber used for utility service purposes.

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site.

“Directional antenna” typically means a panel antenna used to achieve transmission or reception in a specified direction.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Eligible facilities request” means a request for modification of an existing wireless tower or base station that involves (a) co-location of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from any point at the top of an antenna and/or ancillary wireless communication structure to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

"Monopole Tower" means an antenna support structure typically made of steel, wood or concrete.

"Monorock" means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

"Monoshrub/monotree" means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

"Omnidirectional antenna" means an antenna used to achieve transmission or reception in all directions.

"Parabolic antenna" means a specialized antenna that has a curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

"Permittee" means any person, persons or entity, including the city, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.

"Preferred location" means commercial and industrial zones.

"Power density radiation" means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts ( $10^{-3}$  watts) or microwatts ( $10^{-6}$  watts), per unit area, usually centimeters squared.

"Public right-of-way" means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, or is subject to an easement or dedication to the city, or is a privately owned area with the city's jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

"Radio frequency (RF) radiation" consists of electromagnetic waves moving together through space radiating from a transmitting device to a receiving device to achieve wireless communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

"Safety standards" means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

"Satellite antenna" means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

"Substantial change in physical dimensions" means a change in the physical dimensions or configuration of a wireless communications facility that results in public safety, visual, noise or other impacts that are materially greater than those that would have existed if the wireless communications facility were installed as originally permitted. The determination whether or not the proposed modifications to a wireless communications facility constitute a substantial change in physical dimensions is context-based to be made by the director of community development or his/her designee.

"Testing protocol" means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

"Wireless communications facility" means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments.

**25.55.006 Permits Required.**

(A) Wireless Communications Facilities Subject to Design Review. All wireless communications facilities, unless specifically exempted, are subject to design review, as provided for in Section 25.05.040. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and
- (5) Any wireless communications facilities exempted from design review by federal or state law.

(B) Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. An associated coastal development permit may also be required pursuant to Chapter 25.07. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (5) Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and

(6) Any wireless communications facilities exempted from conditional use permit review by federal or state law.

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not require a substantial change in physical dimensions of a wireless communications facility are subject to the granting of an administrative use permit provided for in Section 25.55.007. In addition to such conditions as may be imposed pursuant to Section 25.55.007, all wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for design review, conditional use permits and/or administrative use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or his/her designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating (i) existing base level radio frequency radiation, (ii) the maximum radio frequency radiation, (iii) the effective radiated power per channel and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectored antenna at the proposed site;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;
- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the

~~wireless communications facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;~~

- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;
- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility; and
- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development.
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or his/her designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;
- (6) The applicability of analysis techniques and methodologies;
- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, conditional use permit and administrative use permit applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, conditional use permit or administrative use permit;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:
  - (a) For Structure Mounted Installations (excluding monopole installations):
    - (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominate color of the mounting structure;
    - (ii) When required by the director of community development or his/her designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and
    - (iii) Wireless communications facility installations located above the surface grade in the public right-of-way including, but not limited to those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually

compatible with lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.

(b) For Monopole Tower Installations:

- (i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
- (ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;
- (iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or his/her designee may require additional measures designed to camouflage a wireless communications facility, including but not limited to enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and
- (iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.

(c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

(d) For Co-locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or his/her designee.



- (e) ~~For Accessory Wireless Equipment.~~ No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is menu of potential screening techniques that should be utilized based on the type of installation:
- (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
  - (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and
  - (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating.

**22.55.007 Administrative Use Permit For Wireless Communications Facilities.**

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit may be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Grants of administrative use permits for such facilities is required by the Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012). This section sets forth procedures through which standard conditions and site-specific conditions may be imposed to ensure that such facilities are compatible and harmonious with adjacent or nearby permitted uses, and in accord with existing conditions of the neighborhood site, topographic and street conditions.

(B) Procedure. Administrative use permits for wireless communications facilities shall be subject to the procedures specified in this Section 22.55.007, which procedures shall supersede those set forth in Section 25.05.020.

(C) Application. Application for an administrative use permit shall be made by a property owner or agent. Applications shall provide the information required by Section 25.55.006(D), and such other information as prescribed by the director of community development or his/her designee.

(D) ~~Timing of Approvals.~~ The director ~~community development~~ or his/her designee shall review administrative use permit applications within such times as are required by state and federal law.

(E) Noticing Requirements. Public notice of a determination of an administrative use permit for wireless communications facility(ies) shall be distributed within five (5) business days after the administrative determination to grant such a permit. The public notice shall be mailed to those specified in Section 25.05.065(D)(1) through (9). The content of the notice shall be as specified Section 25.05.065(C)(3) through (8) and the following:

- (1) Date of administrative determination to grant the administrative use permit;
- (2) Name of the director of community development or his/her designee approving the administrative use permit.

(F) Findings. Prior to issuance of an administrative use permit the community development director or his/her designee shall make all of the following findings:

- (1) All notification requirements have been met;
- (2) The proposed use will have no substantial adverse effect upon abutting property;
- (3) The proposed use is consistent with the objectives and policies of the city's general plan;
- (4) The conditions stated in the administrative use permit are deemed necessary to protect the public health, safety and general welfare;
- (5) To the maximum extent reasonably feasible, the proposed wireless communications facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site;
- (6) The wireless communications facility has been conditioned to comply with the development standards set forth in Section 25.55.006(G); and
- (7) For wireless communications facilities within the public rights-of-way:
  - (a) The proposed use is permitted in the public right-of-way and complies with all applicable provisions of the Municipal Code;
  - (b) The proposed wireless communications facility will not interfere with the use of the public right-of-way and existing improvements and utilities thereon;
  - (c) The proposed wireless communications facility will not physically or visually interfere with vehicular, bicycle, and/or pedestrian use of streets, intersections, bicycle lanes, driveways, sidewalks and/or walkways; and
  - (d) The proposed wireless communications facility and its location will comply with the Americans with Disabilities Act.

(G) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall include:

- (1) All conditions as are necessary and appropriate to allow the director of community development or his/her designee to make the findings required by Section 25.55.007(F);
- (2) All conditions required by Sections 25.55.006(G) and 25.55.008;
- (3) That the right to use an administrative use permit shall be contingent upon the fulfillment of all general and special conditions imposed by the administrative use permit;
- (4) That all conditions on the administrative use permit shall constitute restrictions running with the land and shall be binding upon the owner of the land and the successors or assigns;
- (5) That all conditions on the administrative use permit shall be consented to in writing by the applicants and all owners of interests in the land;
- (6) That the administrative use permit, together with all consent forms, shall be recorded by the clerk-recorder of Orange County;
- (7) That the administrative use permit shall be subject to review at any time upon receipt of a written complaint. The director of community development may require a reconsideration of the permit at the end of a specified time period from the date of the original approval, which reconsideration shall take account of at least the following factors: conformance with all conditions of approval, operation of the facility in its intended manner, and conformance with all applicable laws, regulations, standards and updates thereof, including radio frequency emissions and toxic or hazardous materials;
- (8) The permittee shall provide certifications in accordance with Sections 25.55.008(F) and 25.55.008(G);
- (9) The permittee shall submit as-built drawings confirming that the wireless communications facility has been constructed in substantial compliance with the approved plans and permit(s);
- (10) The permittee shall not use, generate, store or dispose of any hazardous materials on, under, about or within wireless communications facility in violation of any law or regulation; and
- (11) Such further conditions of approval of the administrative use permit have been safety impacts.

(H) Appeals. Appeals are subject to the provisions of Section 25.05.070; provided, however, that the date "of decisions, determinations and requirements" (as that phrase is used in Section 25.05.070(B)(2)) shall be the date upon which all noticing requirements as specified in Section 25.55.007(E) have been completed. Notwithstanding any other provision of this Code, if the applicant contends that any requirement imposed pursuant to this Chapter 25.55 violates state or federal law, the applicant shall use the appeal process to seek administrative relief from such requirements. Such administrative relief may be granted by the City Council, if the City Council determines that the failure to grant administrative relief would result in a violation of state or federal law. The scope of the City Council's authority on appeal of the grant of an administrative use permit for a

wireless communications facility shall be limited if, and to the extent, required by state or federal law.

(I) Revocations. Revocations are subject to the provisions of Section 25.05.075.

(J) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except pursuant to a subsequent administrative use permit as might otherwise be required or granted pursuant to the terms of this Chapter.

**25.55.008 Review criteria/standard conditions.**

(A) Zoning Compliance. Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting wireless communications facilities are strongly discouraged in residential zones or adjacent to schools.

(B) Height. Wireless communications facilities shall be limited to a maximum height of thirty-six feet as defined in Section 25.55.004 - Definitions "Height." The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower. Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged. Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height if such installation adds no more than ten inches of horizontal width to a structure's vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the design review board.

(D) Aesthetics. The city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed wireless communications facility's aesthetic visual impact, the design review board or director of community development or his/her designee may request that alternative designs be developed and submitted for consideration. Aesthetic visual impact review shall include consideration of public views, including but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of wireless communications facilities is desirable, but there shall not be an unsightly proliferation of wireless communications facilities on one site, which adversely affects community scenic and aesthetic values.

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(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a wireless communications facility which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the city at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The director of community development or his/her designee shall periodically review the approved wireless communications facility sites and determine if testing is necessary. Approved wireless communications facility providers shall be notified of all such director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying the addresses, email contact information, and 24-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

- (1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility in the public right of way must be removed within 48 hours of notification.
- (2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
- (3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.
- (4) All wireless communications facility sites shall be kept clean and free of litter.
- (5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and 24-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

- (1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty (60) days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety (90) days shall be considered abandoned.
- (3) For wireless communications facilities in the public right-of-way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.

- (4) For wireless communications facilities in the public right-of-way, at any time after ninety (90) days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-located portion thereof, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement Cost Recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

**SECTION 2:** This Ordinance is exempt from compliance with the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

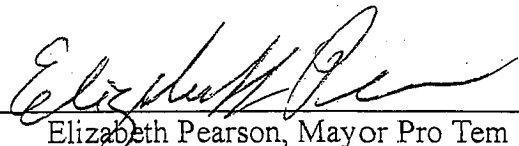
**SECTION 3:** All ordinances and provisions of the Laguna Beach Municipal Code and sections thereof inconsistent herewith shall be hereby repealed to the extent of such inconsistency and no further.

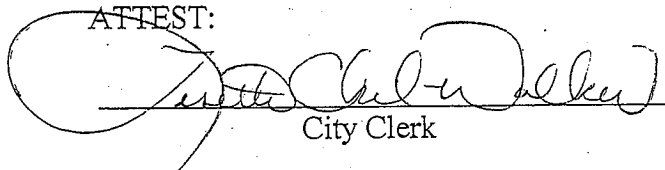
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**SECTION 4:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**SECTION 5:** The City Clerk of the City of Laguna Beach shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective on the expiration of thirty (30) days from and after the date of its adoption.

ADOPTED this 3<sup>rd</sup> day of September, 2013.

  
Elizabeth Pearson, Mayor Pro Tem

ATTEST:  
  
City Clerk

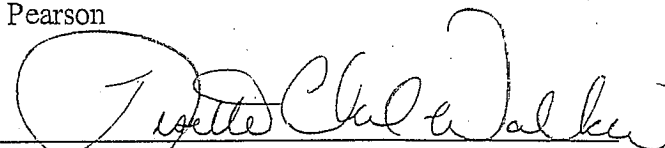
I, LISETTE CHEL-WALKER, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance No. 1579 was introduced at a regular meeting of the City Council on August 20, 2013 and was finally adopted at a regular meeting of the City Council of said City held on September 3, 2013 by the following vote:

AYES: COUNCILMEMBER(S): Whalen, Dicterow, Boyd

NOES: COUNCILMEMBER(S): Iseman

ABSTAIN: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): Pearson

  
City Clerk, City of Laguna Beach, CA

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RECEIVED  
South Coast Region

Chapter 25.55—TELECOMMUNICATIONS  
WIRELESS COMMUNICATIONS FACILITIES

MAR 14 2016

CALIFORNIA  
COASTAL COMMISSION

**25.55.002 Intent and purpose.**

The following regulations shall apply throughout the city. These standards regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, and to preserve the aesthetic values and scenic qualities of the city without prohibiting any entity or, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws.

**25.55.004 Definitions.**

"Agent" means a person(s) from providing authorized to act on behalf of a permittee or other person or receiving telecommunications service. (Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

"Amateur (ham) radio antenna" means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person's hobby.

~~"Antenna" means a device used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based systems.~~

"Antenna" means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

"Antenna support" means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

"Array" means a group of antennas located on the same structure.

"Base level radio frequency (RF) radiation" means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting antennas made prior to a permit application for such facilities-in operation.

"CarrierCable" means any company that is engaged in the provision wire typically consisting of a communication copper, coax or fiber used for utility service purposes.

"Cellular" refers to wireless telephone communication transmitted by electromagnetic waves.

"Co-location" refers to multiple wireless communications devices sharing the same site.

"Directional antenna" typically means a panel or rectangular antenna used to achieve transmission or reception in a specified direction.

~~"Duplexer" means a combining device that allows a transceiver to use a single antenna for both transmitting and receiving.~~

"Effective radiated power (ERP)" means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the "gain" (focusing effect) of the antenna.

~~"Eligible facilities request" means a request for modification of an existing wireless tower or base station that involves (a) co-location of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment.~~

"Federal Communications Commission (FCC)" means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

"Hazardous material" means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

"Height" means the vertical distance from the existing grade any point at the base of the antenna or, in the case of a roof mounted antenna, from the highest point of grade at the exterior base of the building to the highest point of the antenna and any associated support or ancillary wireless communication structure when fully extended to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

"Maximum radio frequency (RF) radiation" means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas' channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

~~"Monopole tower Tower" means a tubular antenna support structure typically made of steel, wood or concrete.~~

"Monorock" means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

"Monoshrub/monotree" means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

"Omnidirectional antenna" means an antenna used to achieve transmission or reception in all directions.

"Parabolic antenna" means a specialized antenna that has a circular-curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

“Permittee” means any person, persons or entity, including the city, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.

“Preferred location” means commercial and industrial zones.

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts ( $10^{-3}$  watts) or microwatts ( $10^{-6}$  watts), per unit area, usually centimeters squared.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, or is subject to an easement or dedication to the city, or is a privately owned area with the city’s jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of electromagnetic waves of electric and magnetic energy moving together through space radiating from a transmitting device to a receiving device to achieve wireless communication communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

~~“Telecommunication facility” means a land use that sends and/or receives radio frequency signals, including but not limited to directional, omnidirectional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, accessory development and structures, and the land or structure on which they are all situated. It does not include mobile transmitting devices, such as vehicle or hand held radios/telephone and their associated transmitting antennas.~~

“Substantial change in physical dimensions” means a change in the physical dimensions or configuration of a wireless communications facility that results in public safety, visual, noise or other impacts that are materially greater than those that would have existed if the wireless communications facility were installed as originally permitted. The determination whether or not the proposed modifications to a wireless communications facility constitute a substantial change in physical dimensions is context-based to be made by the director of community development or his/her designee.

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments.

**25.55.006 Permits required.**

(A) ~~Telecommunications~~ Wireless Communications Facilities Subject to Design Review. All ~~telecommunication~~ wireless communications facilities, unless specifically exempted, are subject to ~~Design Review Board~~ design review and approval, as provided for in Section 25.05.040. ~~Telecommunication~~ Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district; and
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;

(4) Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and

(5) Any wireless communications facilities exempted from design review by federal or state law.

(B) ~~Telecommunications~~ Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all ~~telecommunications~~ wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. An associated coastal development permit may also be required pursuant to Chapter 25.07. ~~Telecommunications~~ Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following classes of satellite antennas/wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;

(3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;

(5) Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and

(6) Any wireless communications facilities exempted from conditional use permit review by federal or state law.

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not require

a substantial change in physical dimensions of a wireless communications facility are subject to the granting of an administrative use permit provided for in Section 25.55.007. In addition to such conditions as may be imposed pursuant to Section 25.55.007, all wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for a design review, conditional use permit application which proposes any telecommunication facility that contains transmitting antenna(s), permits and/or administrative use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or his/her designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating (i) existing base level radio frequency (RF)-radiation, ~~the maximum radio frequency (RF) radiation,~~ (ii) the maximum radio frequency (RF)-radiation, (iii) the Effective Radiated Power (ERP) effective radiated power per channel and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectored antenna at the proposed site shall be provided;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;
- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless communications facility. The analysis shall include photo simulations and

other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;

- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;
- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility; and
- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development.
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or his/her designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;
- (6) The applicability of analysis techniques and methodologies;
- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, conditional use permit and administrative use permit applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, conditional use permit or administrative use permit;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:
  - (a) For Structure Mounted Installations (excluding monopole installations):
    - (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominate color of the mounting structure;
    - (ii) When required by the director of community development or his/her designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and
    - (iii) Wireless communications facility installations located above the surface grade in the public right-of-way including, but not limited to those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with

lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.

(b) For Monopole Tower Installations:

(i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;

(ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;

(iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or his/her designee may require additional measures designed to camouflage a wireless communications facility, including but not limited to enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and

(iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.

(c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

(d) For Co-locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or his/her designee.

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- (e) For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is menu of potential screening techniques that should be utilized based on the type of installation:
- (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
  - (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and
  - (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating.

**22.55.007 Administrative Use Permit For Wireless Communications Facilities.**

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit may be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Grants of administrative use permits for such facilities is required by the Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012). This section sets forth procedures through which standard conditions and site-specific conditions may be imposed to ensure that such facilities are compatible and harmonious with adjacent or nearby permitted uses, and in accord with existing conditions of the neighborhood site, topographic and street conditions.

(B) Procedure. Administrative use permits for wireless communications facilities shall be subject to the procedures specified in this Section 22.55.007, which procedures shall supersede those set forth in Section 25.05.020.

(C) Application. Application for an administrative use permit shall be made by a property owner or agent. Applications shall provide the information required by Section 25.55.006(D), and such other information as prescribed by the director of community development or his/her designee.

(D) Timing of Approvals. The director community development or his/her designee shall review administrative use permit applications within such times as are required by state and federal law.

(E) Noticing Requirements. Public notice of a determination of an administrative use permit for wireless communications facility(ies) shall be distributed within five (5) business days after the administrative determination to grant such a permit. The public notice shall be mailed to those specified in Section 25.05.065(D)(1) through (9). The content of the notice shall be as specified Section 25.05.065(C)(3) through (8) and the following:

- (1) Date of administrative determination to grant the administrative use permit;
- (2) Name of the director of community development or his/her designee approving the administrative use permit.

(F) Findings. Prior to issuance of an administrative use permit the community development director or his/her designee shall make all of the following findings:

- (1) All notification requirements have been met;
- (2) The proposed use will have no substantial adverse effect upon abutting property;
- (3) The proposed use is consistent with the objectives and policies of the city's general plan;
- (4) The conditions stated in the administrative use permit are deemed necessary to protect the public health, safety and general welfare;
- (5) To the maximum extent reasonably feasible, the proposed wireless communications facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site;
- (6) The wireless communications facility has been conditioned to comply with the development standards set forth in Section 25.55.006(G); and
- (7) For wireless communications facilities within the public rights-of-way:
  - (a) The proposed use is permitted in the public right-of-way and complies with all applicable provisions of the Municipal Code;
  - (b) The proposed wireless communications facility will not interfere with the use of the public right-of-way and existing improvements and utilities thereon;
  - (c) The proposed wireless communications facility will not physically or visually interfere with vehicular, bicycle, and/or pedestrian use of streets, intersections, bicycle lanes, driveways, sidewalks and/or walkways; and
  - (d) The proposed wireless communications facility and its location will comply with the Americans with Disabilities Act.

(G) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall include:

- (1) All conditions as are necessary and appropriate to allow the director of community development or his/her designee to make the findings required by Section 25.55.007(F);

- (2) All conditions required by Sections 25.55.006(G) and 25.55.008;
- (3) That the right to use an administrative use permit shall be contingent upon the fulfillment of all general and special conditions imposed by the administrative use permit;
- (4) That all conditions on the administrative use permit shall constitute restrictions running with the land and shall be binding upon the owner of the land and the successors or assigns;
- (5) That all conditions on the administrative use permit shall be consented to in writing by the applicants and all owners of interests in the land;
- (6) That the administrative use permit, together with all consent forms, shall be recorded by the clerk-recorder of Orange County;
- (7) That the administrative use permit shall be subject to review at any time upon receipt of a written complaint. The director of community development may require a reconsideration of the permit at the end of a specified time period from the date of the original approval, which reconsideration shall take account of at least the following factors: conformance with all conditions of approval, operation of the facility in its intended manner, and conformance with all applicable laws, regulations, standards and updates thereof, including radio frequency emissions and toxic or hazardous materials;
- (8) The permittee shall provide certifications in accordance with Sections 25.55.008(F) and 25.55.008(G);
- (9) The permittee shall submit as-built drawings confirming that the wireless communications facility has been constructed in substantial compliance with the approved plans and permit(s);
- (10) The permittee shall not use, generate, store or dispose of any hazardous materials on, under, about or within wireless communications facility in violation of any law or regulation; and
- (11) Such further conditions of approval of the administrative use permit have been safety impacts.

(H) Appeals. Appeals are subject to the provisions of Section 25.05.070; provided, however, that the date "of decisions, determinations and requirements" (as that phrase is used in Section 25.05.070(B)(2)) shall be the date upon which all noticing requirements as specified in Section 25.55.007(E) have been completed. Notwithstanding any other provision of this Code, if the applicant contends that any requirement imposed pursuant to this Chapter 25.55 violates state or federal law, the applicant shall use the appeal process to seek administrative relief from such requirements. Such administrative relief may be granted by the City Council, if the City Council determines that the failure to grant administrative relief would result in a violation of state or federal law. The scope of the City Council's authority on appeal of the grant of an administrative use permit for a wireless communications facility shall be limited if, and to the extent, required by state or federal law.

(I) Revocations. Revocations are subject to the provisions of Section 25.05.075.

(J) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except

pursuant to a subsequent administrative use permit as might otherwise be required or granted pursuant to the terms of this Chapter.

**25.55.008 Review criteria/standard conditions.**

(A) Zoning Compliance. ~~Telecommunications~~ Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. ~~Transmitting telecommunications~~ wireless communications facilities ~~are most~~ are most appropriately located in commercial and industrial zones and are strongly discouraged in residential zones or adjacent to schools.

(B) Height. ~~Telecommunications~~ Wireless communications facilities shall be ~~restricted~~ limited to a maximum height of thirty-six feet ~~above the highest point of grade as~~ defined in Section 25.51.002(A). ~~55.004 - Definitions "Height."~~ The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower. ~~Telecommunications~~ Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height; if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged. ~~Telecommunications~~ Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height; if such installation adds no more than ten ~~(10)~~ inches of horizontal width to a structure's vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to telecommunication wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the ~~Design Review Board~~ design review board.

(D) Aesthetics. ~~The City's~~ city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed ~~telecommunications~~ wireless communications facility's aesthetic visual impact, the ~~Design Review Board~~ design review board or director of community development or his/her designee may request that alternative designs be developed and submitted for the board's consideration. Aesthetic visual impact review shall include consideration of public views, including but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of ~~telecommunications~~ wireless communications facilities is desirable, but there shall not be an unsightly proliferation of ~~telecommunications~~ wireless communications facilities on one site, which adversely affects community scenic and ~~economia~~ aesthetic values.

Exhibit 2

(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a ~~telecommunications~~wireless communications facility, which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the ~~City~~city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the ~~City~~city at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified, and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the ~~telecommunications~~wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the ~~City~~city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. ~~The Planning Commission~~director of community development or his/her designee shall periodically review the approved ~~telecommunications~~wireless communications facility sites and determine if testing is necessary. ~~Approved telecommunications~~wireless communications facility providers shall be notified of all such ~~Planning Commission determination hearings~~director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

Exhibit 2

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying the addresses, email contact information, and 24-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

- (1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility in the public right of way must be removed within 48 hours of notification.
- (2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
- (3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.
- (4) All wireless communications facility sites shall be kept clean and free of litter.
- (5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and 24-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

- (1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty (60) days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety (90) days shall be considered abandoned.
- (3) For wireless communications facilities in the public right-of-way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that

same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.

- (4) For wireless communications facilities in the public right-of-way, at any time after ninety (90) days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-located portion thereof, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement Cost Recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

Exhibit 2

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FCC 1.40001

Revised as of October 2, 2015

Goto Year: [2014](#) | [2016](#)

## § 1.40001 Wireless Facility Modifications.

(a) Purpose. These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) Definitions. Terms used in this section have the following meanings.

(1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- (i) Collocation of new transmission equipment;
- (ii) Removal of transmission equipment; or
- (iii) Replacement of transmission equipment.

FCC 47 CFR sec. 1.40001

LG B LCPA 2-13 Wireless Comm.

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(4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) Transmission equipment. Equipment that facilitates transmission for any

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Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the

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application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

[ 80 FR 1269 , Jan. 8, 2015]

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Appendix A to Part 1&C"A Plan of Cooperative Procedure in Matters and Cases Under the Provisions of Section 410 of the Communications Act of 1934

(Approved by the Federal Communications Commission October 25, 1938, and approved by the National Association of Railroad and Utilities Commissioners on November 17, 1938.)

preliminary statement concerning the purpose and effect of the plan

Section 410 of the Communications Act of 1934 authorizes cooperation between the Federal Communications Commission, hereinafter called the Federal Commission, and the State commissions of the several States, in the administration of said Act. Subsection (a) authorizes the reference of any matter arising in the administration of said Act to a board to be composed of a member or members from each of the States in which the wire, or radio communication affected by or involved in the proceeding takes place, or is proposed. Subsection (b) authorizes conferences by the Federal Commission with State commissions regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commissions and of said Federal Commission and joint hearings with State commissions in connection with any matter with respect to which the Federal Commission is authorized to act.

Obviously, it is impossible to determine in advance what matters should be the subject of a conference, what matters should be referred to a board, and what matters should be heard at a joint hearing of State commissions and the Federal Commission. It is understood, therefore, that the Federal Commission or any State commission will freely suggest cooperation with respect to any proceedings or matter affecting any carrier subject to the jurisdiction of said Federal Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

To enable this to be done, whenever a proceeding shall be instituted before any commission, Federal or State, in which another commission is believed to be interested, notice should be promptly given each such interested commission by the commission before which the proceeding has been instituted. Inasmuch, however, as failure to give notice as contemplated by the provisions of this plan will sometimes occur purely through inadvertence, any such failure should not operate to deter any commission from suggesting that any such proceeding be made the subject matter of cooperative action, if cooperation therein is deemed desirable.

It is understood that each commission whether or not represented in the National Association of Railroad and Utilities Commissioners, must determine its own course of action with respect to any proceeding in the light of the law under which, at any given time, it is called upon to act, and must be guided by its own views of public policy; and that no action taken by such Association can in any respect prejudice such freedom of action. The approval by the Association of this plan of cooperative procedure, which was jointly prepared by the Association's standing Committee on Cooperation between Federal and State commissions and said Federal Commission, is accordingly recommendatory only; but such plan is designed to be, and it is believed that it will be, a helpful step in the promotion of cooperative relations between the State commissions and said Federal Commission.

notice of institution of proceeding

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