

**Replacement for Malibu Wireless Code Chapter 17.46 – for Wireless Antennas and Related Facilities** (internal section formatting/renumbering consistent with city practice necessary).

**The City Council of the City of Malibu does ordain as follows:**

**A. Purpose and Intent.**

The purpose of this Chapter is to regulate the installation, operation and maintenance of personal wireless service facilities and other wireless antennas in the city of Malibu, California (Hereinafter “the City”). The unrestricted installation of redundant personal wireless service facilities is contrary to the city’s efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a residential character within the city to the maximum extent allowed by law.

Whereas, wireless services provide some benefit to individuals, businesses and the economy.

Whereas, the installation and operation of the facilities and equipment associated with wireless services results in aesthetic and visual blight, reduces the value of adjacent properties, creates health and safety concerns, especially to those who may have pre-existing conditions exacerbated by exposure to wireless emissions or have been or will be directly sickened by exposure, presents economic and fiscal challenges to citizens and the City, and gives rise to significant potential liability by the City.

Whereas, Congress imposed significant limitations on the City’s ability to regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission’s (“FCC”) regulations concerning such emissions, has prevented the City from prohibiting or erecting limitations that prohibit or have the effect of prohibiting the provision of personal wireless services or lead to unreasonable discrimination among providers of functionally equivalent services, and has required certain procedural steps and deadlines.

Whereas, Congress reserved the City’s right to regulate the “operation” of personal wireless service facilities under 47 USC 332, subject to limitations in other provisions of Title 47, USC and valid FCC regulations.

Whereas, the FCC has enacted various rules that purport to implement various provisions in the Communications Act. The City believes some of the FCC’s rules go beyond, violate or are not consistent with Congress’ intent and the relevant legislation, and many of those are presently subject to judicial review and may change.

Whereas, there is ample scientific evidence, including US government studies, indicating adverse health effects from levels of radiation well below the FCC Radiofrequency (“RF”) emissions guidelines; the World Health Organization classified this radiation as a 2B carcinogen; in 2014, California Medical Association passed a resolution acknowledging that the science has shown profound adverse effects of wireless technology and called on the FCC to update its health regulations; in 2018 the California Department of Public Health published guidelines admitting that peer reviewed scientific studies show evidence that wireless radiation may cause DNA damage, reproduction harms, cancer and learning disabilities among other effects; and some residents of the City of Malibu have already been injured by RF emissions within the allowed FCC RF emissions; and, despite being fully apprised of these things the FCC’s present RF emissions rules are not biologically-based or sufficiently-protective of human or animal life or the environment.

Whereas the City has traditionally had the power and duty to protect the health and safety of its residents but in this instance is prevented in large measure from doing so with regard to personal wireless service emissions by federal law and the FCC’s inadequate rules, except insofar as allowed or required by other state or federal law;

Whereas, the City reserves the right and intends to exercise its powers to protect its citizens, its right to exercise all available power and right over its own property and regulate the use and occupation of that property, and to regulate land use to the maximum extent allowed by law, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential statutory changes by Congress or valid rule amendments by the FCC.

In enacting this chapter, the city intends to:

1. Promote and protect the health, safety, comfort, convenience and general welfare of residents and business in accord with Section 17.02.030 of this title;
2. Provide the benefits derived by the city, its residents and the general public from access to personal wireless services while minimizing, to the greatest extent feasible, their detriments;
3. Balance these goals, by permitting the installation and operation of personal wireless facilities and other wireless antennas where they are needed, while reducing, to the greatest extent feasible, adverse economic, health, safety and/or aesthetic impacts on nearby properties and the community as a whole; and
4. Comply with applicable law, including the 1996 Telecommunications Act and state law. No provision shall be interpreted in a manner that violates state or federal law. Any provision found to be beyond the City’s power shall be severable, but subject to replacement or correction in a manner that is consistent with state and federal law.

It is the intent of the City that no additional rights, vested interests or entitlements be conferred to construct or maintain personal wireless service facilities, other than those rights or entitlements mandated by applicable state or federal law and as to those only insofar as they continue to be required by state or federal law.

## **B. General Provisions.**

1. **Change of Law.** Recognizing that the federal, state and municipal statutes and regulations referenced herein are subject to legislative or administrative change or interpretation by courts of law, no permit issued herein shall establish a vested right. All permits issued under this title shall remain voidable or subject to required amendment, at the option of the City, to accommodate changes in the law or regulations. Further, the revocation or modification of any permit, by the City, to accommodate any changes in the law or regulations shall not give rise to any right by a permittee to seek any damage claim or injunctive relief to enforce prior permit conditions.
2. **Applicability.** This Chapter applies to all to proposed installations, operations and maintenance of personal wireless service facilities and other wireless antennas. It also provides for private enforcement. The Chapter addresses, without limitation:
  - (a) All applications for approval of the installation of new personal wireless service facilities in the City, whether on publicly-owned property or residential or commercial property.
  - (b) All applications for a personal wireless facilities minor modification permit for an existing wireless tower or base station.
  - (c) All applications for a small wireless facility permit.
  - (d) Regulations, restrictions and permit provisions for satellite earth stations/terminals other than direct-to-home satellite service and receive/transmit fixed satellite antennas/terminals on residential or commercial property.
  - (e) Regulations, restrictions and permit provisions antennas for direct broadcast satellite services, receive/transmit fixed satellite antennas/terminals, fixed wireless services and multichannel multipoint distribution services on residential or commercial property.
  - (f) All permit applications for amateur radio antennas.
  - (g) All applications under any Section that were received by the department but not approved prior to the effective date of the ordinance codifying this Section, shall comply with the regulations and guidelines of this Section.

(h) All applications that have been previously approved but are now or hereafter modified or renewed.

### 3. General Requirements for All Permits.

(a) This Subsection B.3 provides the general requirements for all required permits for all types of antennas and facilities. These requirements apply unless a specific Section below expressly exempts that type antenna or facility from one or more of these general requirements.

(b) Prior to the issuance of a personal wireless service permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the City of Malibu Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, including restoring the site to its original condition if possible. The amount of the performance bond shall be set by the director on a case-specific basis and designed to be rationally related to the cost of removal. The director shall take into consideration information provided by the permit applicant regarding the cost of removal, but may also consider other information.

(c) An applicant shall not transfer a permit to any person or entity prior to completion of construction. If, after construction completion, the permit-holder seeks to transfer the permit to a third party the transferee must agree to be bound by all conditions of the permit, and meet all financial and technical conditions in the permit.

(d) The City finds that wireless antennas and facilities that are not properly sited and installed can be unsightly and become a nuisance to nearby residents and property owners. They can also lead to radiofrequency/electromagnetic emissions that pass over property boundaries and penetrate the body of persons who may not consent to the property intrusion or a bodily integrity intrusion. Each such person has the right to notice of the planned wireless antenna/facility installation and operation and given an opportunity to object. The applicant shall provide notice that an application for permit has been filed by mailing such notice to the record owner of each property within one thousand five hundred (1,500) feet of the proposed site where the antenna or facility will be installed or modified. The notice shall provide:

(i) location of the contemplated installation by postal address and GPS coordinates, the contemplated coverage area and propagation characteristics;

- (ii) the City-assigned application identifier;
  - (iii) sufficient information for the recipient to identify and obtain a full copy of the application;
  - (iv) applicant name, address and other contact information that will allow the recipient to contact the applicant;
  - (v) The full contact information at the City that will allow the recipient to obtain sufficient information to decide whether to participate in the application and consideration process at the City.
- (e) All persons residing or owning property within 1,500 feet of the proposed location shall have the right to participate. Others may also be given leave to fully participate at the City's discretion.
- (f) Failure to accomplish full and proper service of notice will render any approved permit void.
4. State and Federal Disability, Housing and Discrimination Requirements and Procedures for All Permits.
- (a) Certain parts of the Malibu population have state and/or federal statutory accommodation and other rights due to disabilities, handicaps, or other conditions or legal classifications.
  - (b) The City has procedural and substantive obligations under state and federal disability, handicap, housing and discrimination laws.
  - (c) In certain circumstances the proposed owner, installer and/or operator may also have procedural and substantive duties and obligations.
  - (d) This Subsection implements the rights afforded to certain residents, the duties and obligations imposed on the City and any duties and obligations that may apply to the proposed owner, installer and/or operator.
  - (e) Citizen response to notice. Any citizen that receives a notice of application and desires to seek the protection and rights afforded under state and federal law or those with a disability, handicap or other protected status or condition may submit a response to the application and oppose the application or seek reasonable accommodation. Relief may be requested in the alternative.
  - (f) The City will generally follow the procedures and requirements set out in Section 17.63 for purposes of processing the request for accommodation.
  - (g) Any accommodation or other relief found appropriate by the City will become a mandatory condition of approval and be stated in the permit.

The City may also determine that the location chosen by the applicant is by definition a more intrusive means to close a significant gap in coverage and require a different location.

- (h) The proposed owner, installer and/or operator may have continuing accommodation obligations and duties to certain persons after installation and operation begins. Failure to comply with those obligations and duties, if any, may lead to cancellation or modification of the permit upon proper complaint filed with the City after approval. This available process is cumulative and not exclusive, nor is it a substitute for rights enforcement sought before any other venue or jurisdiction.

### **C. Standards For All Personal Wireless Service Facilities.**

All personal wireless service facilities, including small wireless facilities, shall comply with the following requirements for permits under Sections D, E, F and G:

1. **Permit Requirements.** No new personal wireless service facility shall be installed until the applicant or operator has obtained:
  - (a) a wireless facility permit or small wireless facility permit;
  - (b) an encroachment permit from the public works department (if applicable);
  - (c) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.
  - (d) a master license agreement with the City, for deployment of any small cell technology in the PROW on any city owned property including but not limited to public light signal poles.
2. All modifications to an existing personal wireless service facility that do not meet the findings of approval required for a wireless facility minor modification permit as specified herein or a small wireless facility permit as specified herein, shall be subject to the approval of:
  - (a) a wireless facility permit;
  - (b) an encroachment permit from the public works department (if applicable);
  - (c) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit; and
  - (d) a Master License Agreement for deployment in the PROW on any city owned property including but not limited to public light or signal poles (if one does not already exist).

3. All modifications to an existing personal wireless facility that meet the conditions of approval required for a wireless facility minor modification permit as specified herein shall be subject to the approval of:
  - (a) a wireless facility minor modification permit;
  - (b) an encroachment permit from the public works department (if applicable);
  - (c) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit;
  - (d) a Master License Agreement for deployment in the PROW on any city owned property including but not limited to public light or signal poles (if one does not already exist).
4. Applications for wireless facility permits shall be first reviewed by the director. All completed applications for wireless facility permits found acceptable for processing by the director will be scheduled for a public hearing before the commission in accordance with this Chapter and Chapter 17 of this Code.
5. The commission shall determine if a proposed project for which a wireless facility permit is required to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support) and the proposed antenna or facility is the least intrusive means to do so.
6. **Wireless Facility Permit Application Content.** Applications for the approval of wireless facility permits for personal wireless service facilities shall include, but are not necessarily limited to, an application fee and the following information, in addition to all other information required by the City for a wireless facility permit application pursuant to Chapter 17 of this Code:
  - (a) Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of this Chapter;
  - (b) Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this Chapter;
  - (c) For new facilities, the plans shall include (in plan view and elevations) a scaled depiction using the proposed project as a baseline;
  - (d) A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within two (2)

years of submittal of the application. Applicants may not file, and the City shall not accept, applications that are not consistent with the master plan for a period of two (2) years from approval of a wireless facility permit unless:

- (i) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a personal wireless service facility site not shown on a master plan submitted to the city within the prior two (2) years or
  - (ii) the applicant establishes before the commission that a new personal wireless service facility is necessary to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so;
- (e) A siting analysis which identifies a minimum of five (5) other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one (1) colocation site.
- (f) An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the emissions levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective."
- (g) A statement of the anticipated effective radiated power levels that will exist as emissions radiate outward from the site, divided into 200-foot increments, all the way to the edge of the anticipated coverage area.
- (h) In addition to the preceding, the applicant shall pay for continuous automated monitoring of compliance with FCC regulatory limits by a company selected by the City. The City shall have access to all monitoring information. The City may, at its election, instead conduct periodic monitoring and recover the costs of such monitoring from the applicant.



- (i) A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury that the applicant is not in possession or control of any non-publicly disclosed evidence or information supporting the proposition that the emissions from the antenna and/or the pulsation/modulation used by the system may lead to adverse biological, health or environmental effects. If the applicant is in possession or control of any such information, it shall fully disclose all such information. Any disclosures in response to this requirement will not lead to denial of the requested permit so long as the applicant also adequately demonstrates that the facility or antenna will at all times operate within FCC requirements and limits.
- (j) A noise study prepared by a qualified engineer for the proposed personal wireless service facility including, but not limited to, equipment, such as air conditioning units and back-up generators.
- (k) A written statement of the applicant's willingness to allow other carriers to co-locate on the proposed personal wireless service facility where technically and economically feasible and aesthetically desirable, subject to the qualification that colocation should not occur when public exposures from the resulting higher cumulative sources would exceed FCC limits.
- (l) Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code Section 65940, or to respond to changes in law or technology.
- (m) An application for a personal wireless service facility in a public right-of-way for which the applicant claims entitlement under California Public Utilities Code Section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.
- (n) A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application. If attester not an authorized employee of the applicant, then the attester must demonstrate that it is an authorized agent of the applicant, with lawful Power of Attorney from the applicant.
- (o) At the time of filing, the applicant shall provide the notice required by Section B(3)(d) to all persons entitled to such notice.

## **7. New Wireless Facility Preferred Zones and Locations.**

- (a) When doing so would not conflict with one (1) of the standards set forth in this Section or with federal law, personal wireless service facilities subject to the approval of a wireless facility permit or small wireless facility permit

shall be located in the most appropriate location as described in this Subsection, which range from the most appropriate to the least appropriate. Nothing in this Section shall detract from the requirements of this Title, as set forth below.

- (i) Collocation on an existing facility in a commercial zone.
- (ii) Collocation on an existing structure or utility pole in a commercial zone.
- (iii) Location on a new structure in a commercial zone.
- (iv) Collocation on an existing facility in a public facility or recreation zone.
- (v) Location on an existing structure or utility pole in a public facility or recreation zone.
- (vi) Location on a new structure in a public facility or recreation zone.
- (vii) The City expressly designates residential areas and schools as the least appropriate possible location, and the absolute last choices for siting. In no event will a permit be granted within 1,500 feet of a residential area or school unless the applicant demonstrates by clear and convincing evidence that the proposed site is necessary to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so. In such event the facility must still be set back the maximum feasible distance from any residential area or school.

- (b) No new facility may be placed in a less appropriate area (as identified in this section) unless the applicant demonstrates to the satisfaction of the commission or director that no more appropriate location can feasibly serve the area the facility is intended to serve. Provided, however, that the commission or director may authorize a facility to be established in a less appropriate location if they enter an express finding with specific justifications that doing so is necessary to best minimize adverse economic, health, safety and/or aesthetic impacts on nearby properties, individuals and the community as a whole.

**8. Design and Development Standards.** Personal wireless service facilities, including small wireless facilities, shall be designed and maintained as follows:

- (a) All new personal wireless service facilities shall be set back at least one thousand five hundred (1,500) feet from schools, dwelling units and parks, as measured from the closest point of the personal wireless service facility

(including accessory equipment) to the applicable property line, unless an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so.

- (b) An applicant who seeks to increase the height of an existing personal wireless service facility, or of its antennas, located less than one thousand (1,500) feet from a school, dwelling unit or park and who is subject to the approval of a wireless facility permit for the proposed height increase must establish that such increase is necessary to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so.
- (c) In addition to all other requirements set forth in this chapter, all wireless telecommunications facilities shall meet the following design requirements:
  - (i) Each facility must comply with any and all applicable provisions of the Malibu Municipal Code, including but not limited to provisions of the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, and any conditions of approval imposed as part of the approval process.
  - (ii) Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission, the Federal Aviation Administration and the California Public Utility Commission.
  - (iii) The facility must at all times comply with all applicable health requirements and standards pertaining to radio frequency emissions.
  - (iv) Interference with City communications systems is prohibited. All proposed facility applications shall include reports, as required by the Los Angeles County Fire Department, to evaluate potential interference. The applicant shall be responsible for any costs incurred by the City, including the costs of retaining consultants, to review and analyze the reports.
  - (v) Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually

operated emergency lights for use when official operating personnel are on site.

- (vi) Facade-mounted antennas and equipment shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from the building face.
- (vii) Ground-mounted wireless telecommunication facilities shall be located near existing structures or trees at similar heights for screening purposes where feasible.
- (viii) All wireless telecommunication facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the coverage objectives.
- (ix) All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located. If ground mounted, the antennas and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility to the greatest extent feasible.
- (x) All wireless telecommunication facilities shall be designed to prevent unauthorized climbing.
- (xi) Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations.
- (xii) Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening.
- (xiii) All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation. Freestanding monopoles in highly visible locations shall incorporate stealth techniques to minimize their prominence.

- (xiv) Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts to the extent deemed necessary by the Director. Landscaping screening should also be provided if irrigation water is available.
  - (xv) No freestanding facility such as a monopole, lattice tower, or similar structure including ancillary support equipment may be located between the face of a building and a public street, bikeway or park.
- (d) Unless otherwise prohibited by state or federal law, all equipment not located on a roof shall be underground; any equipment that is not undergrounded shall be screened from adjacent uses to the maximum extent feasible.
  - (e) The facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or expressly permitted by the city.
  - (f) No wireless facility shall emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility. At no time shall equipment noise (including air conditioning units) from any facility exceed the applicable noise limit established in Section 8.24.050 of this Title at the facility's property line; provided, however, that for any such facility located within five hundred (500) feet of any property zoned open space or residential, or improved with a residential use, such equipment noise shall at no time be audible at the property line of any open space or residentially zoned, or residentially improved property.
  - (g) If the majority of the personal wireless service coverage from the proposed facility is outside the city limits, the applicant must, in addition to the other requirements of this Section, prove that the applicant is unable to locate the proposed new facility within the locale or locales that will receive the majority of the coverage from the proposed personal wireless service facility, and that no other feasible location for the facility exists outside of the city limits. The fact, if applicable, that an application for permit has been denied in another jurisdiction shall not be considered evidence or proof that the applicant is unable to locate in another jurisdiction.
  - (h) In addition to generally meeting all state and federal regulatory requirements, all facilities must be designed to minimize fire hazards. The applicant shall seek and obtain plan-specific fire review approval from the County of Los Angeles Fire Department. The applicant shall contract and pay for ongoing monitoring by the Los Angeles Fire Department in extreme fire hazard zones during the entire life of the facility. In

emergency situations the permit holder must follow Fire Department commands.

9. Independent Expert Review. The City shall retain one (1) or more independent, qualified consultants to review any application for a permit for a personal wireless service facility, a wireless facility minor modification permit, or a small wireless facility. The review is intended to be a review of technical aspects of the proposed wireless service facility or modification of an existing wireless service facility and shall address any or all of the following, as applicable:
  - (a) Whether the proposed wireless service facility is necessary to close significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed increase is the least intrusive means to do so;
  - (b) The accuracy and completeness of submissions;
  - (c) Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
  - (d) The applicability of analysis techniques and methodologies;
  - (e) The viability of alternative sites and alternative designs; and
  - (f) If applicable, an analysis of the potential expansion that would be considered an eligible facility request under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012; and
  - (g) Any other specific technical issues designated by the city.

The cost of the review shall be paid by the applicant through a deposit estimated to cover the cost of the independent review, as established by the director or city council.

10. **Conditions of Approval.** All facilities subject to a wireless facility permit approved under this Section shall be subject to the following conditions, as applicable:

- (a) Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the city
- (b) Abandonment:
  - (i) Personal wireless service facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a

voluntary termination by the applicant of any land use entitlement under this Code or any predecessor to this Code.

- (ii) The director shall send a written notice of the determination of non-operation to the owner and operator of the personal wireless service facility, who shall be entitled to a hearing on that determination before the planning commission pursuant to Section 17.04.220. Upon a final decision by the planning commission or the city council or the running of the time for a request for a hearing or appeal without such a request, the operator shall have ninety (90) days to remove the facility.
- (iii) The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.
- (iv) All facilities not removed within the required ninety (90) day period shall be in violation of this Code. In the event the City removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and/or owner shall be jointly and severally liable for the payment of all costs and expenses the City incurs for the removal of the facilities, including legal fees and costs.

11. The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the City and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the City's review and/or approval of the design, construction, operation, location, inspection or maintenance of the facility. If the applicant or operator is a subsidiary of a parent corporation the parent corporation shall also bind itself to the indemnification requirement and amount.

12. A personal wireless service facility approved by a wireless facility permit may operate only until the tenth (10<sup>th</sup>) anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued under this Section. There is no limit to the number of times the sunset date for a facility may be extended.

13. Removal of Incompatible Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code Section 65964(b), any personal wireless service facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the City and at the applicant's or

operator's own expense, remove that facility. Written notice of a determination pursuant to this paragraph shall be sent to the owner and operator of the personal wireless service facility, The director shall send a written notice of the determination of non-operation to the owner and operator of the personal wireless service facility, who shall be entitled to a hearing on that determination before the planning commission pursuant to Section 17.04.220. Upon a final decision by the planning commission or the city council or the running of the time for a request for a hearing or appeal without such a request, the operator shall have ninety (90) days to remove the facility.

14. The owner or operator of any personal wireless service facility approved by a wireless facility permit under this Subsection (C) of this Section, shall cooperate with the director to: (1) verify that the facility design conforms with relevant building and safety requirements; and (2) verify that the facility complies with the requirements of this Chapter of the Malibu Municipal Code.
15. Wireless Facility Permit Findings. In addition to any other findings required by this Chapter, no wireless facility permit for a proposed personal wireless service facility may be approved unless the commission or council finds as follows:
  - (a) The applicant has demonstrated by clear and convincing evidence that the facility is necessary to close a significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support). Such evidence includes in-kind call testing of existing facilities within the area the applicant contends is a necessary to close significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so.
  - (b) The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's personal wireless service coverage (without consideration of other services that the facilities may also support) which alternative site is a more appropriate location for the facility under the standards of this Chapter.
  - (c) The facility satisfies the location requirements of this Chapter.
16. Insurance. Prior to the issuance of a personal wireless service related permit, the applicant shall pay for and provide a copy of a policy of General Liability Insurance issued by an "A" rated Insurance company and cover the named applicant and each operator of an antenna if different than the applicant. Each Such policy shall be a claims made policy, listing the applicant as a primary insured, and the City as an additional insured, in the minimum amount of \$2,000,000 / \$25,000,000. The policy shall not have a pollution or other exclusion which excludes injuries or damages from EMF/RF exposures. A true and correct



copy of the policy of insurance shall constitute proof of insurance required by this Subsection.”

17. Indemnification. Prior to issuance of a personal wireless service related permit, to the fullest extent permitted by law, the Applicant and/or any Licensee under any Master License Agreement, and any successors and assigns, shall defend, indemnify and hold harmless City, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney’s fees, litigation expenses, and court costs of any kind, without restriction or limitation, incurred in relation to, as a consequence of, arising out of, or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility, the issuance of any permit or entitlement in connection therewith and the operation of the facility thereafter. The applicant shall pay such obligations as they are incurred by City, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the City reasonably determines necessary to protect the City from exposure to fees, costs or liability with respect to such claim or lawsuit. If the applicant or operator is a subsidiary of a parent corporation the parent corporation shall also bind itself to the indemnification requirement and amount.
18. Prior to the issuance of a permit, the applicant shall obtain a Coastal Zone permit from the California Coastal Commission or its designated agent, if the placement of the wireless service equipment is intended to occur in a zone requiring such permit.
19. Prior to the issuance of a permit, the applicant shall establish and prove it has complied with NEPA, has completed the FCC’s NEPA checklist and to the extent required has done a NEPA environmental analysis and provided the results of that analysis to the FCC.
20. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless service facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
21. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. The applicant shall contract and pay for ongoing monitoring by the Los Angeles Fire Department in high fire zones during the entire life of the facility. In emergency situations the permit holder must follow Fire Department commands. Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

22. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
23. **Violations.** The City may revoke a wireless facility permit for any personal wireless service facility in violation of this Chapter. Any installation made without a proper permit or in violation of a permit will operate to bar the applicant from eligibility for any other permits within the City for one (1) year. Repeated violations may, at the discretion of the City, result in cancellation of all active permits. The remedies specified herein shall be cumulative and the City may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
24. **Permit, review, renewal and revocation procedure.** The City finds that the technology associated with telecommunications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that telecommunications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, and welfare that telecommunications providers be required to replace older facilities with newer equipment of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, any modifications requested to an existing facility for which a permit issued pursuant to this Chapter authorizing establishment of a wireless facility shall permit the director to review the provider's existing facility to determine whether requiring newer equipment or applying new screening techniques that reduce visual impacts is appropriate if technically feasible.
25. At any time, the director may initiate proceedings to revoke a permit issued pursuant to this Chapter. Grounds for revocation shall be limited to a finding that the owner or operator has abandoned the facility, the facility is no longer in compliance with either the general requirements or design standards of this Title, the conditions of approval and the owner or operator has failed to bring the facility into compliance within ninety (90) days after a notice has been sent by the director requiring the facility to be brought into compliance, the facility is no longer in compliance with applicable FCC or FAA regulations, the facility has not been upgraded to reduce or minimize its impact to the extent reasonably permitted by the technology available at the time of any requested modifications, or if the director determines that revocation would be in the best interest of the public health, safety, or welfare, including circumstances like fire hazards, transitional areas or view corridors..

#### **D. Standards for Personal Wireless Service Facilities Not Located Within a Public Right-of-Way.**

1. In addition to the requirements in Section (C) above, all personal wireless service facilities subject to the approval of a wireless facility permit or small wireless facility permit, and not located within a public right-of-way, shall comply with the following requirements:

(a) **Location Requirements.** To minimize aesthetic and visual impacts on the community, personal wireless service facilities shall be located according to the following standards:

(i) **General Requirements.** A freestanding telecommunications tower or monopole shall be set back a distance of at least one hundred fifty (150) percent of the height of the tower from the nearest property line of any residentially zoned or occupied lot.

(ii) **Restricted Locations.** Personal wireless service facilities located in any of the following locations must be designed as a stealth facility:

(A) Within any nonresidential zone on a site that contains a legally established residential use;

(B) Within the Old Town overlay zone;

(C) On any property that is designated historic by the city council;

(D) Within the area subject to the Malibu Master Plan;

(E) Within a scenic corridor designated by the city; and

(F) Within a historic district designated by the city.

(b) **Prohibited Locations.** No personal wireless service facility shall be established in the locations described in subparagraphs (i), (ii) and (iii) herein.

(i) **Ridgelines.** No personal wireless service facility shall be placed on or near a ridgeline.

(ii) **Residential Zones.** No personal wireless service facility shall be placed within a residential zone, including areas set aside for open space, parks or playgrounds.

(iii) **Open Space.** No personal wireless service facility shall be placed within an open space zone or park. A personal wireless service facility is not and shall not be deemed a "public utility" as that term is otherwise defined and understood in the Malibu Municipal Code regarding development in such open space zones.

(c) Guidelines for Placement on Structures. Antennas shall be mounted on structures utilizing the methods described below. If an antenna cannot be mounted as set forth in Subsection (i), it may be mounted in accordance with Subsection (ii). If an antenna cannot be mounted as set forth in either Subsection (i) or (ii), it may be mounted in accordance with Subsection (iii):

(i) A stealth facility mounted on an existing structure or collocated on an existing tower;

(ii) A stealth facility mounted on an existing steel or concrete pole, including a light standard, or

(iii) A stealth facility mounted on a new steel, wood or concrete pole.

2. **Design and Development Standards.** Personal wireless service facilities shall be designed and maintained as follows:

(a) Building-mounted facilities shall be designed and constructed to be fully screened in a manner that is compatible in color, texture and type of material with the architecture of the building on which the facility is mounted.

(b) All accessory equipment associated with the operation of a personal wireless service facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

3. **City Council Approval Required.** Personal wireless service facilities subject to the approval of a wireless facility permit may be permitted in a prohibited location only if the applicant obtains a wireless facility permit from the city council following a public hearing and recommendation from the commission, and provides technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the City, that it is necessary to close significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so.

## **E. Standards for Personal Wireless Service Facilities Located Within Public Rights-of-Way.**

1. In addition to the requirements in Sections (B) and (C) above, all personal wireless service facilities subject to the approval of a wireless facility permit or small wireless facility permit, and located within public rights-of-way, shall comply with the following requirements to the fullest extent permitted by state and federal law:

- (a) **Construction.** These standards are intended to exert the maximum authority available to the City in the regulation of personal wireless service facilities under applicable state and federal law but not to exceed that authority. Accordingly, this Section shall be construed and applied in light of any such limits on the city's authority. The purpose of this Subsection (E) is to regulate personal wireless service facilities proposed for sites within public rights-of-way consistently with the rights conferred on telephone corporations by Public Utilities Code §§ 7901 and 7901.1 and to address the aesthetic and safety concerns unique to such proposals due to their highly visible location in rights-of-way that must be safely shared with pedestrians, motorists and other utility infrastructure.
  - (b) **Application Content.** Applications for the approval of personal wireless service facilities within the public right-of-way shall include the information required by Sections (B) and (C) above and also provide certification that the facility is for the use of a telephone corporation or state the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
2. **Guidelines.** All personal wireless service facilities, including small wireless facilities, located within a public right-of-way shall be designed as follows:
- (a) Ground-mounted equipment shall be screened, to the fullest extent possible, through the use of landscaping, walls, or other decorative feature, as approved by the commission.
  - (b) Facilities located within a designated scenic corridor or historic districts shall be stealth facilities, with all equipment, excluding required electrical meter cabinets, located underground or pole-mounted. Required electrical meter cabinets shall be screened as approved by the commission.
  - (c) Personal wireless service facilities not located within a scenic corridor or historic district designated by the city shall be designed to place all equipment underground, excluding required electrical meters. However, if such facilities cannot be placed underground, ground-mounted equipment may be installed up to a height of five (5) feet and to a footprint of fifteen (15) square feet.
  - (d) Pole-mounted equipment shall not exceed six (6) cubic feet.
  - (e) Pole-mounted antennas shall adhere to the following guidelines. If an antenna cannot be mounted as set forth in Subsection (i), it may be mounted in accordance with Subsection (ii). If an antenna cannot be mounted as set forth in either Subsection (i) or (ii), it may be mounted in accordance with Subsection (iii).

- (i) A stealth facility mounted on an existing, co-located monopole or tower;
  - (ii) A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
  - (iii) A stealth facility mounted on a new steel, wood or concrete pole but only if an operator shows that it cannot otherwise necessary to close significant gap in the applicant's personal wireless service (without consideration of other services that the facilities may also support), and the proposed antenna or facility is the least intrusive means to do so.
- (f) All installations shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of an additional antenna installation on a pole with existing antennae.
- (g) The maximum height of any antenna shall not exceed twenty-four (24) inches above the height of a pole or tower other than a streetlight pole, nor six (6) feet above the height of a streetlight pole, nor shall any portion of the antenna or equipment mounted on a pole be less than sixteen (16) feet above any drivable road surface. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95 as it now exists or may hereafter be amended.
- (h) A freestanding telecommunications tower or monopole shall be set back a distance of at least one hundred fifty (150) percent of the height of the tower to the nearest structure designed for occupancy.
- (i) No antenna associated with a small wireless facility shall exceed three (3) cubic feet in volume including all physically-integrated mounting apparatus attached thereto, including without limitation connectors, mounting brackets, antenna element aiming equipment, and other antenna equipment.
- (j) Equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic, (ii) inconvenience to the public's use of a public right-of-way, (iii) safety hazards to pedestrians and motorists, or (iv) interfere with, block or impede access to curb cuts or sidewalk ramps. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.
- (k) Except for facilities co-located on the same pole or tower, facilities shall not be located within five hundred (600) feet of another wireless facility.
- (l) No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act, or in

any way place the City in violation of any portion of the Americans with Disabilities Act, Fair Housing Act or similar state law.

3. **Findings.** In addition to the findings required in Subsection (C) above, no proposed personal wireless service facility subject to the approval of a wireless facility permit or small wireless facility permit within a public right-of-way may be approved unless the following findings are made:
  - (a) The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
  - (b) The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.
  - (c) **Conditions of Approval.** In addition to compliance with the guidelines outlined in paragraph (3) of this Subsection and the conditions of approval listed in Subsection (C)(9) above, all facilities approved under this Subsection (E) shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the director to:
    - (i) protect the public health, safety, and welfare;
    - (ii) prevent interference with pedestrian and vehicular traffic; or
    - (iii) prevent damage to a public right-of-way or any property adjacent to it.
4. Before the director imposes conditions, changes, or limitations pursuant to this paragraph, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.
5. The applicant or operator of the personal wireless service facility shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a personal wireless service facility unless:
  - (a) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses, and
  - (b) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities.

6. Every applicant or operator of any personal wireless service facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility or its operation. Before commencement of any work pursuant to an encroachment permit issued for any personal wireless service facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.
7. Should any utility company offer electrical service to a wireless facility which service does not require the use of a meter cabinet, the applicant or operator of the facility shall at its cost remove the meter cabinet and any foundation thereof and restore the area to its prior condition.

## **F. Requirements for Personal Wireless Service Facilities Subject to a Wireless Facility Minor Modification Permit.**

This Subsection governs applications for certain modifications to existing personal wireless service facilities, as specified. To the extent not preempted by federal law, the requirements in Sections B and C also apply.

1. **Purpose.** Subsection (F) is intended to comply with the City's obligations under federal law, which provides that the City "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156.) This Subsection creates a process for the City to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless service facility is covered by this federal law and to determine whether the City must approve the proposed collocation or modification. The City's review of these applications is structured to comply with the requirements of Title 47, United States Code, Section 1455 and the FCC's valid regulations implementing this federal law and codified at 47 C.F.R. §§ 1.6100. This Section is intended to promote the public's health, safety, and welfare to the maximum extent allowed by federal law, but shall be interpreted consistent with the federal Telecommunications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, Section 1455, and applicable valid FCC regulations and binding precedential court decisions.
2. **Applicability.** An applicant seeking approval of a collocation or modification to an existing personal wireless service facility which the applicant contends is within the protection of Title 47, United States Code, Section 1455 shall apply for the following at the same time:
  - (a) a wireless facility minor modification permit, and



- (b) an encroachment permit from the public works department (if required by applicable provisions of this Code), and
  - (c) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.
- 3. No collocation or modification to an existing personal wireless service facility shall be installed unless the applicant or operator has obtained either a wireless facility minor modification permit or a wireless facility permit.
- 4. **Application Content.** All applications for a wireless facility minor modification permit must include the following items, unless the city is prohibited from requiring the information by 47 C.F.R. 1.600(c)(1).
  - (a) Application Form. The city's standard application form, available on the city's website or from the community development department, as may be amended.
  - (b) To the extent not contained in the city's standard application form, all information required by Sections B and C and either D or E as appropriate.
  - (c) Application Fee. An application fee as established by the council by resolution.
  - (d) Independent Consultant Deposit. An independent consultant fee deposit, if required by the council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application and verify that the application is eligible under 47, United States Code, Section 1455.
  - (e) Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
    - (i) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
    - (ii) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
    - (iii) A depiction of all existing and proposed utility runs and points of contact.
    - (iv) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

- (v) For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012, or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the base station as it existed on February 22, 2012, or as approved if constructed after February 22, 2012.
  - (vi) A demolition plan.
- (f) Visual Simulations. A visual analysis that includes:
- (i) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle;
  - (ii) a color and finished material palate for proposed screening materials; and
  - (iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (g) Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an "eligible facilities request" and does not result in a substantial change in the physical dimensions of the facility's wireless tower or base station, as defined by Section 6409, Title 47, United States Code, Section 1455, and justifying that assertion. The written statement shall fully explain and justify how each proposed collocation or modification meets each and every of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b).
- (h) Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, Section 1455 and the FCC's regulations implementing this federal law.
- (i) Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed personal wireless service facility complies with all applicable building codes.

- (j) Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed personal wireless service facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.
  - (k) Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless service facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).
  - (l) Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city's website.
  - (m) At the time of filing the applicant shall provide the notice required by Section B(3)(d) to all persons entitled to such notice.
  - (n) Subsection C(7)(b) does not apply to Wireless Facility Minor Modification Permits.
5. Application Review, Notice, and Hearing. Each application for a wireless facility minor modification permit shall be reviewed by the director at a public hearing. Notice of the public hearing shall be provided in accord with this Section M and this Chapter. Under federal law, the city must approve or deny an application for a wireless facility minor modification permit, together with any other city permits required for a proposed wireless facility modification, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility minor modification permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law. The "shot clock" and tolling provisions in 47 C.F.R. (c)(2)-(4) shall apply. All applications shall be processed within a reasonable period of time considering the circumstances.
- 6. Findings Required for Approval by Director at Public Hearing.**
- (a) The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower only if each of the following findings can be made:
    - (i) The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good

standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities;

- (ii) The proposed collocation or modification meets each and every of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b).
- (iii) The director shall make an express finding for each criterion that applies and for any criterion found not to apply the director shall make independent findings justifying the determination that a criterion does not apply.
- (iv) The existing facility complies 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 47 C.F.R. 1.40001(b)(7)(i) through (iv).

**7. Conditions of Approval for Wireless Facility Minor Modification Permits.** In addition to any other conditions of approval permitted under federal and state law and this Code that the director deems appropriate or required under this Code, all wireless facility minor modification permits under this Subsection, whether approved by the director or deemed granted by the operation of law, shall include the following conditions of approval:

- (a) No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
- (b) Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by Section 6409, subdivision (a).
- (c) As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless service facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- (d) Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

- (e) Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
- (f) Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this Section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- (g) In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, Section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- (h) The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, Section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, Section 1455 or this Code.

#### **8. Wireless Facility Minor Modification Permit Denial Without Prejudice.**

- (a) Grounds for denial without prejudice. The director may deny without prejudice an application for a wireless facility minor modification permit in any of the following circumstances:
  - (i) The director cannot make all findings required for approval of a wireless facility minor modification permit;
  - (ii) The proposed collocation or modification would cause the violation of an objective, generally applicable law protecting public health or safety;
  - (iii) The proposed collocation or modification involves the removal and replacement of the facility's entire supporting structure; and/or

- (iv) The proposed collocation modification does not qualify for mandatory approval under Title 47, United States Code, Section 1455, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.
- (b) Procedures For Denial Without Prejudice. All wireless facility minor modification permit application denials shall be in writing and shall include (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.
- (c) Submittal After Denial Without Prejudice. After the director denies a wireless facility minor modification permit application, and subject to the generally applicable permit application submittal provisions in this Chapter, an applicant shall be allowed to:
  - (i) Submit a new wireless facility minor modification permit application for the same or substantially the same proposed collocation or modification;
  - (ii) Submit a new wireless facility permit application for the same or substantially the same proposed collocation or modification; or
  - (iii) Submit an appeal of the director's decision.
- (d) Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any wireless facility minor modification permit application. In the event that the director denies a wireless facility minor modification permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a wireless facility permit application or submit a wireless facility minor modification permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

## **G. Requirements for Small Wireless Facility Permits.**

This Section governs applications for small wireless facilities permits.

1. **Purpose.** Subsection (G) is intended to comply with the city's obligations under 47 C.F.R. Section Part 1, Subpart U, Sections 1.6001-1.6003 as they pertain to small wireless facilities. This Subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to

determine whether the city must approve the proposed collocation or deployment.

2. **Applicability.** An applicant seeking approval of a claimed small wireless facility as defined in 47 C.F.R. 1.6002(l) shall apply for the following at the same time:
  - (a) a small wireless facility permit,
  - (b) an encroachment permit from the public works department (if required by applicable provisions of this Code), and
  - (c) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.
  
3. **Application Content.** All applications for a small wireless facility permit must include the following items:
  - (a) Application Form. The city's standard application form, available on the city's website or from the community development department, as may be amended.
  - (b) To the extent not contained in the city's standard application form, all information required by Sections B and C and then D or E, as applicable.
  - (c) Application Fee. An application fee as established by the council by resolution.
  - (d) Independent Consultant Deposit. An independent consultant fee deposit, if required by the council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application and verify that the application is eligible for approval.
  - (e) Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
    - (i) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
    - (ii) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
    - (iii) A depiction of all existing and proposed utility runs and points of contact.
    - (iv) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

- (v) A demolition plan.
- (f) Visual Simulations. A visual analysis that includes:
  - (i) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle;
  - (ii) a color and finished material palate for proposed screening materials; and
  - (iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (g) Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed personal wireless service facility complies with all applicable building codes.
- (h) Noise Study. A noise study or written statement, prepared by a qualified engineer, for the proposed personal wireless service facility including, but not limited to, equipment, such as air conditioning units and back-up generators. The noise study shall assess compliance with this Chapter and Section 8.24.050.
- (i) Statement Asserting That 47 C.F.R. Section 1.6001 Et Seq. Applies. A written statement asserting that the proposed collocation or deployment qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. Section 1.6002.
- (j) Site Survey. For any small wireless facility proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures with two hundred fifty (250) feet from the proposed project site, which includes without limitation all:
  - (i) traffic lanes;
  - (ii) all private properties and property lines;
  - (iii) above and below grade utilities and related structures and encroachments;
  - (iv) fire hydrants, roadside call boxes and other public safety infrastructure;



- (v) streetlights, decorative poles, traffic signals and permanent signage;
- (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains;
- (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and
- (viii) existing trees, oak trees, planters and other landscaping features.

(k) Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable). The application shall also provide true and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval.

(l) Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city's website.

4. Applicants may submit up to five (5) individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
5. At the time of filing the applicant shall provide the notice required by Section B(3)(d) to all persons entitled to such notice.
6. **Application Review.** Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. At the time an application is deemed complete, the director shall provide written notice to all property owners as provided in Section M.1.

7. **Tolling Period.** Unless a written agreement between the applicant and the city provides otherwise, for an initial application to deploy Small Wireless Facilities, if the City notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the City to render the application complete.
8. **Standards Governing Approval by Director.** The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards and must make the following findings in order to approve the application:
  - (a) The existing structure was constructed and maintained with all necessary permits in good standing.
  - (b) The proposed collocation or modification meets each and every of the applicable criteria for a small wireless facility stated in 47 C.F.R. 1.6002(l).
  - (c) The director shall make an express finding for each criterion that applies and for any criterion found not to apply the director shall make independent findings justifying the determination that a criterion does not apply.
  - (d) The proposed collocation is consistent with the wireless facility permit preferred zones and locations.
  - (e) The proposed collocation is consistent with the design and development standards of Subsection (C)(6).
  - (f) The proposed collocation is consistent with the design and development standards of Subsection (C)(7), except that Subsection (C)(7)(g) does not apply.
  - (g) The proposed collocation is consistent with the independent expert review provisions of Subsection (C)(8).
  - (h) The proposed collocation is consistent with the conditions of approval provisions of Subsection (C)(9).
  - (i) For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of Subsection (D).
  - (j) For collocation located within the public right-of-way, the proposed collocation shall be consistent with Subsection (E), except that Subsections (E)(2)(e)(iii) and (E)(2)(k) do not apply.

- (k) The proposed collocation would be in the most preferred location and configuration within six hundred (600) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within six hundred (600) feet would be technically infeasible, applying the preference standards of this Section.
  - (l) The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
9. The director may approve an application for a small wireless facility permit only if each of the following findings can be made:
- (a) The proposed project meets the definition for a "small wireless facility" as defined by 47 C.F.R. 1.6002(l);
  - (b) The proposed project would be in the most preferred location, within six hundred (600) feet from the proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence that any more preferred location(s) within six hundred (600) feet would be technically infeasible;
  - (c) The proposed project complies with the standards for a small wireless facility.
  - (d) For proposed project not located within the public right-of-way, the proposed project complies with Section (D).
  - (e) For proposed projects located within the public right-of-way, the proposed project complies with Section (E), except that Subsections (E)(2)(e)(iii) and (E)(2)(k) do not apply.
  - (f) The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
10. **Conditions of Approval for Small Wireless Facility Permits.** In addition to any other conditions of approval permitted under federal and state law and this Code that the director deems appropriate or required under this Code, all small wireless facility permits under this Subsection shall include the following conditions of approval:
- (a) **No Automatic Renewal.** The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
  - (b) **Compliance with Previous Approvals.** The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.

- (c) As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- (d) Compliance with applicable laws. The applicant and each operator of an antenna (if different than the applicant) shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.
- (e) Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
- (f) Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this Section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- (g) In the event that a court of competent jurisdiction invalidates or limits, a federal law or regulation such that federal law would not mandate approval for the collocation or deployment granted or deemed granted under a small wireless facility permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- (h) The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction any federal law or regulation regarding small wireless facility permits issued pursuant to that federal law or regulation or this Code.

#### **11. Small Wireless Facility Permit Denial Without Prejudice.**

- (a) Grounds for denial without prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:

- (i) The director cannot make all findings required for approval of a small wireless facility permit;
  - (ii) The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
  - (iii) The proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
  - (iv) The proposed collocation or deployment does not qualify for mandatory approval under federal law, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.
- (b) Procedures for denial without prejudice. All small wireless facility permit application denials shall be in writing and shall include:
- (i) the decision date;
  - (ii) a statement that the city denies the permit without prejudice;
  - (iii) a short and plain statement of the basis for the denial; and
  - (iv) that the applicant may submit the same or substantially the same permit application in the future.
- (c) Submittal after denial without prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
- (i) Submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
  - (ii) Submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
  - (iii) Submit an appeal of the director's decision.
- (d) Costs to review a denied permit. The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

## H. Standards for Satellite Earth Stations Other Than Direct-to-Home Satellite Service and Receive/Transmit Fixed Satellite Antennas

1. This Section addresses all satellite earth stations/terminals other than those addressed in 47 C.F.R. 1.4000, which imposes limits on local zoning, land use or building regulations on property within the exclusive use or control of the antenna/terminal user where the user has a direct or indirect ownership or leasehold interest in the property and the earth station/terminal serves only residents of the same property. The standards for Direct-to-Home and Receive/Transmit Fixed Satellite Antennas are contained in Section I.
2. The purpose of these requirements is to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a residential character within the city to the maximum extent allowed by law. Satellite antennas/terminals subject to this Section H, including portable units and dish antennas, shall be designed, installed and maintained in compliance with the regulations of the FCC.
3. **Permit Requirement.** Subject to Subsection H(4) below no permit or zoning clearance shall be required for satellite antennas/terminals with diameters of one (1) meter or less. Administrative plan review approval shall be required for antennas/terminals between one and two meters. A conditional use permit consistent with Section 17.66.090 is required for antennas/terminals larger than one meter located within a designated scenic corridor.
4. **Cross Property Line Impacts.** Any satellite antennas/terminals that will allow RF/EMF emissions to cross the residential property line of the host parcel require a conditional use permit for the installation of such antenna/terminal consistent with Section 17.66.090.
5. **Application; Plans.** Plans for satellite antennas/terminals shall be submitted with permit or administrative plan applications, and shall include a site plan and elevation drawings indicating the height, diameter, color, setbacks, foundation details, landscaping, and method of screening. The plans shall be subject to approval of the director
6. At the time of filing an application the applicant shall provide the notice required by Section B(3)(d) except that such notice shall be mailed to the record owner of each property within three hundred (300) feet of the site of the proposed site where the antenna/terminal or facility will be installed or modified.
7. **Location.** No satellite antenna/terminal shall be located within any required front-yard or street-side-yard setbacks in any zone. In addition, no portion of a satellite antenna/terminal shall extend beyond a property line.

8. **Color.** A satellite antenna/terminal and its supporting structure shall be painted a single, neutral, non-glossy color; such as an earth tone, gray, or black; and, to the extent possible, be compatible with the appearance and character of the surrounding neighborhood.
9. **Wiring.** All wiring shall be placed underground whenever possible.
10. **Residential Zones.** In any residential zone, satellite antennas/terminals shall be subject to the following standards:
  - (a) Only ground-mounted satellite antennas/terminals shall be permitted. Ground-mounted antennas/terminals shall be located in the rear yard of any property to the extent technically possible;
  - (b) Satellite antennas/terminals shall not exceed fifteen (15) feet in height;
  - (c) Only one (1) satellite antenna/terminal may be permitted on any single-family residential site;
  - (d) Only one (1) antenna/terminals shall be permitted per dwelling unit on any multiple family residential site;
  - (e) A satellite antenna/terminal shall be separated from adjacent properties by at least a six- foot-high solid wall or fence or by trees or other plants of equal minimum height;
  - (f) Any satellite antenna/terminal that is taller than an adjacent property-line fence shall be located away from the side or rear property line a distance equal to or greater than the height of the antenna/terminal;
  - (g) The diameter of a satellite antenna/terminal shall not exceed two (2) meters. This provision may be modified by the director if the applicant provides a sufficient technical study prepared by a qualified engineer demonstrating to the director's satisfaction that strict compliance would result in no satellite reception; and
  - (h) A satellite antenna/terminal shall be used for private, noncommercial purposes only.
11. **Nonresidential Zones.** In any nonresidential zone, satellite antennas/terminals may be roof- or ground-mounted and shall be subject to the following standards:
  - (a) If roof-mounted, satellite antennas/terminals shall be screened from ground view by a parapet or other screening approved by the city. The minimum height and design of a parapet, wall, or other screening shall be subject to the approval of the director;

- (b) If ground-mounted, satellite antennas/terminals shall not be located between a structure and an adjacent street and shall be screened from public view and neighboring properties;
- (c) The location and height of satellite antennas/terminals shall comply with all requirements of the underlying zone; and
- (d) If the subject site abuts a residential zone, all antennas/terminals shall be set back a minimum distance from the property line equal to the height of the antenna/terminal, unless screened from view.

**I. Standards for Antennas for Direct Broadcast Satellite Services, Receive/Transmit Fixed Satellite Antennas Fixed Wireless Services and Multichannel Multipoint Distribution Services.**

1. This Section addresses antennas/terminals and supporting masts covered by 47 C.F.R. 1.4000, which imposes limits on local zoning, land use or building regulations on property within the exclusive use or control of the antenna/terminals user where the user has a direct or indirect ownership or leasehold interest in the property and the antenna/terminal serves only residents of the same residential or commercial property.
2. This Section applies to antennas/terminals used (i) to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; (ii) to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive/transmit fixed wireless signals via satellite; and (iii) to receive or transmit fixed wireless signals other than via satellite.
3. For purposes of this Section, “fixed wireless signals” means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include AM radio, FM radio, amateur radio, CB radio, and Digital Audio Radio Service (DARS) signals.
4. The purpose of these requirements is to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a residential character within the city to the maximum extent allowed by law. Satellite antennas/terminals subject to this Section H, including portable units and dish antennas, shall be designed, installed and maintained in compliance with the regulations of the FCC.
5. The City intends that these provisions not be interpreted to impair installation, maintenance or use by (i) unreasonably delaying or preventing installation,



maintenance, or use; (ii) unreasonably increasing the cost of installation, maintenance, or use; or (iii) precluding reception or transmission of an acceptable quality signal. The City also intends that any restrictions or requirements imposed herein be no more burdensome to affected antenna/terminals users than is necessary to achieve these stated purposes and objectives.

6. Prohibitions:

- (a) No antenna/terminal may exceed one meter in diameter or diagonal measurement.
- (b) No supporting mast may exceed fifteen (15) feet in height;
- (c) Only one (1) antenna/terminal may be permitted on any single-family residential site;
- (d) Only one (1) antenna/terminal shall be permitted per dwelling unit on any multiple family residential site;
- (e) An antenna/terminal shall be separated from adjacent properties by at least a six- foot-high solid wall or fence or by trees or other plants of equal minimum height;
- (f) Any antenna/terminal (with supporting mast) that is taller than an adjacent property-line fence shall be located away from the side or rear property line a distance equal to or greater than the height of the antenna/terminal and mast;
- (g) The antenna/terminal and supporting service shall be used for private, noncommercial purposes only.
- (e) No antenna/terminal may cause any impact or emission of RF/EMF that crosses the residential property line of the host parcel.

12. A variance from the prohibitions in Subsection 12 may be obtained through a conditional use permit consistent with Section 17.66.090. At the time of filing for conditional use the applicant shall provide the notice required by Section B(3)(d), except that such notice shall be mailed to the record owner of each property within three hundred (300) feet of the site of the proposed site where the antenna/terminal or facility will be installed or modified.

**J. Standards for Amateur Radio Antennas.**

All amateur radio antennas shall be designed, constructed and maintained as follows:

- 1. The maximum height shall not exceed forty (40) feet, measured from finished grade;

2. Any boom or other active element or accessory structure shall not exceed twenty-five (25) feet in length;
3. Antennas may be roof- or ground-mounted; and
4. Antennas may not be located in any front-yard or side-yard setbacks;
5. These standards in this Subsection (H) are subject to modification or waiver by the director on a case-by-case basis where required for the city to comply with FCC PRB-1 and California Government Code Section 65850.3 and where such modification or waiver is based on sufficient technical information provided in writing by the applicant at the request of the city.
6. At the time of filing the applicant shall provide the notice required by Section B(3)(d) to all persons entitled to such notice, except that such notice shall be mailed to the record owner of each property within three hundred (300) feet of the site of the proposed site where the antenna or facility will be installed or modified.

**K. Effects of Development on Antenna Reception.** The city shall not be liable if development within the city after installation of an antenna impairs antenna reception, transmission, utility, or function to any degree.

#### **L. Planning Commission.**

For purposes this Chapter "commission" means the planning commission created pursuant to Chapter 2.36 of this Code.

#### **M. Private Enforcement.**

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

1. The city attorney or city prosecutor may bring a civil action to enforce this ordinance and to obtain the remedies specified below or otherwise available in equity or at law. Provided, the statutory damages allowed under Subsection 5(a)(ii) shall be trebled in any successful action by the city attorney or city prosecutor.
2. Any person acting for the interests of himself, herself, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this ordinance with the remedies specified below, if both the following requirements are met:
  - (a) The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this Section to the city attorney and to the alleged violator.

- (b) No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
3. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven (7) days of filing it.
  4. Upon settlement of or entry of judgment in an action brought pursuant to this Section, the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this Section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
  5. Upon proof of a violation of this Section, the court shall award the following:
    - (a) Appropriate injunctive relief and damages in the amount of either:
      - (i) Upon proof, actual damages;
      - (ii) With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) for each violation of this Section (hereinafter "statutory damages"). Unless otherwise specified in this Section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this Section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.
      - (iii) Restitution to the appropriate party or parties of gains obtained due to a violation of this Section.
      - (iv) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
      - (v) Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.
    - (b) Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

6. Upon proof of at least one violation of this Section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this Section or, as to small claims court actions, a judgment payable on condition that a further violation of this Section occur within a time specified by the court.
7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this Section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.
8. Nothing in this Section shall prohibit a private enforcer from bringing an action to enforce this Section in small claims court, provided the relief sought is within the jurisdiction of that court.
9. These remedies are cumulative and not exclusive. A party may seek the same, similar or additional relief based on other claims or theories of law in any venue with proper jurisdiction over those claims.

#### **M. Hearing Notice to Neighbors.**

1. After an application to allow the installation of a wireless service facility is complete, the city shall endeavor to provide property owners at least thirty (30) days' prior notice of the initial public hearing on the matter as follows:
  - (a) For applications subject to Sections (C), (D), (E), (F) or (G), written notice shall be mailed to the record owner of each property within one thousand five hundred (1,500) feet of the proposed site. For applications, if any, pursuant to Sections (H), (I) or (J), notice shall be mailed to the record owner of each property withing 300 feet of the proposed site.
  - (b) The applicant shall bear the cost of notice.
2. A public hearing may be set on less than thirty (30) days' notice if necessary to comply with applicable law, including but not limited the FCC's valid and currently-applicable "Shot Clock" rules, depending on the context and application type.
3. Failure of the city to provide notice pursuant to this Subsection (M) shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.
4. Appeals, if any, from a final decision may be taken pursuant to this Code or state and federal law. Nothing in this Chapter effects or limits any other rights or causes of action.

#### **O. Definitions.**

In addition to the definitions provided herein, and in Section 17.02.060, this Chapter shall be construed in light of the following definitions, which shall in turn also be interpreted consistently with applicable FCC definitions in 47 C.F.R. Part 1 Subpart U when the context demands.

- **"Accessory equipment"** means any equipment installed, mounted, operated or maintained in close proximity to a personal wireless service facility to provide power to the personal wireless service facility or to receive, transmit or store signals or information received by or sent from a personal wireless service facility.
- **"Antenna"** means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building.
- **"Antenna structure"** means the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon. In practical terms, an antenna structure could be a free-standing structure, built specifically to support antennas or act as an antenna, or it could be a structure mounted on some other man-made object.
- **"Applicable law"** means all applicable federal, state and local law, ordinances, codes, rules, regulations and orders, as the same may be amended from time to time.
- **"Applicant"** includes any person or entity submitting an application to install a personal wireless service facility under this Section and the persons within the scope of the term "applicant" as defined by Section 17.02.060 of this Code. Applicant shall include "Authorized Persons".
- **"Authorized Persons"** means any person or entity for whom a legal Power of Attorney has been executed by and Applicant and filed with the City.
- **"Base station"** means the equipment and non-tower supporting structure at a fixed location that enables FCC licensed or authorized wireless telecommunications between user equipment and a communications network.
- **"City"** means the City of Malibu.
- **"Collocation"** means the mounting or installation of additional wireless transmission equipment at an existing wireless facility.
- **"Commission"** has the meaning set forth in paragraph (L) of this Section.

- **“Direct-to-home satellite services”** means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.
- **"Director"** means the City of Malibu Community Development Director or his or her designee.
- **"FCC"** means the Federal Communications Commission or any successor to that agency.
- **"In-kind call testing"** means testing designed to measure the gap in personal wireless service coverage asserted by an applicant. “Call testing” is not limited to voice service but is limited to “covered” personal wireless services. If a claimed gap is for in-building coverage, then in-building call testing must be performed to establish the existence or absence of such a gap unless the applicant provides a sworn affidavit demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing and the circumstances that prevented the applicant from conducting such testing. Claimed gaps in service for "in-vehicle" or "open-air" service may be demonstrated by call testing performed in vehicles or in the open.
- **"Least intrusive means"** means that the location or design of a personal wireless service facility addresses a significant gap in the applicant’s personal wireless service (without consideration of other services that the facilities may also support), while doing the least disservice to the stated policy objectives of this Chapter. Analysis of whether a proposal constitutes the least intrusive means shall include consideration of means to close an asserted significant gap by co-locating a new personal wireless service facility on the site, pole, tower, or other structure of an existing personal wireless service facility.
- **"Monopole"** means a structure composed of a single spire, pole, or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm, and similar monopoles camouflaged to resemble faux objects attached on a monopole.
- **"MPE"** means maximum permissible exposure.
- **"Non-tower supporting structure"** means any structure, whether built for wireless communications purposes or not, that supports wireless transmission equipment under a valid permit at the time an applicant submits an application for a permit under this Code and which is not a wireless tower.
- **"OET"** or **"FCC OET"** means the Office of Engineering and Technology of the FCC.
- **"Open space"** includes (1) land which is zoned OS, OS-DR, or REC, (2) land in residential zones upon which structures may not be developed by virtue of a

restriction on title, (3) all common areas, private parks, slope easements, and (4) any other area owned by a homeowners association or similar entity.

- **"Park"** and **"playground"** shall have their ordinary, dictionary meanings.
- **"Personal wireless service"** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- **"Unlicensed wireless service"** means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.
- **"Personal wireless service facility"** means facilities for the provision of personal wireless services.
- **"Wireless service facility,"** or **"wireless facility"** means a structure, antenna, pole, tower, equipment, accessory equipment and related improvements used, or designed to be used, to provide wireless transmission of personal wireless service.
- **"Private enforcer"** is the person bringing an action allowed by Section M.
- **"Residential zone"** means a zone created by Chapter 17.06.010 et seq. of this title.
- **"RF"** means radio frequency.
- **"Significant gap"** as applied to an applicant's personal wireless service or the coverage of its personal wireless service facilities is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law in this state construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:
  1. A significant gap may be demonstrated by in-kind call testing.
  2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed. For purposes of this definition "call testing" is not limited to voice service but is limited to the "covered" personal wireless services the applicant desires to provide over the proposed facility.
  3. A significant gap may be measured by:

- (a) The number of people affected by the asserted gap in service;
  - (b) Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;
  - (c) Whether the asserted gap affects Highway 101, a state highway, or an arterial street which carries significant amounts of traffic.
- **"Small wireless facility"** meets each of the following conditions:
    - (1) The facilities—
      - (i) Are mounted on structures 50 feet or less in height including their antennas, or
      - (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or
      - (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
    - (2) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three cubic feet in volume;
    - (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
    - (4) The facilities do not require antenna structure registration under FCC rules;
    - (5) The facilities are not located on Tribal lands, as defined by FCC rules;
    - (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b)..
  - **"Stealth facility"** means any personal wireless service facility which is designed to substantially blend into the surrounding environment by, among other things, architecturally integrating into a structure or otherwise using design elements to conceal antennas, antenna supports, poles, equipment, cabinets, equipment housing and enclosure; and related above-ground accessory equipment.
  - **"Terminal"** in the context of satellite installations, means the user equipment associated with a satellite antenna that facilitates user interoperation. Such equipment may be part of or incorporated into the antenna structure or a separate device connected to the antenna and interfacing with other user communications equipment.



- **"Transmission equipment"** or **"wireless transmission equipment"** means any equipment that facilitates transmission for any FCC licensed or authorized personal wireless service, including but not limited to, radio transceivers, antennas and other equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supplies.
- **"Wireless"** generally means an FCC licensed or authorized wireless service.
- **"Wireless facility minor modification permit"** means a permit issued under this chapter authorizing the modification of an existing personal wireless service facility. The procedures for the application for, approval of, and revocation of such a permit shall be those required by this Chapter.
- **"Wireless facility permit"** means a permit issued under this chapter authorizing the installation, operation and maintenance of a personal wireless service facility. Except as otherwise provided by this chapter, the procedures for the application for, approval of, and revocation of such a permit shall be those required by this Chapter and, where applicable, other provisions in the Malibu City Code for a conditional use permit.
- **"Wireless tower"** or **"telecommunications tower"** mean any structure, including a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure, designed and constructed for the primary purpose of supporting any FCC licensed or authorized wireless service facility antennas and their associated facilities.