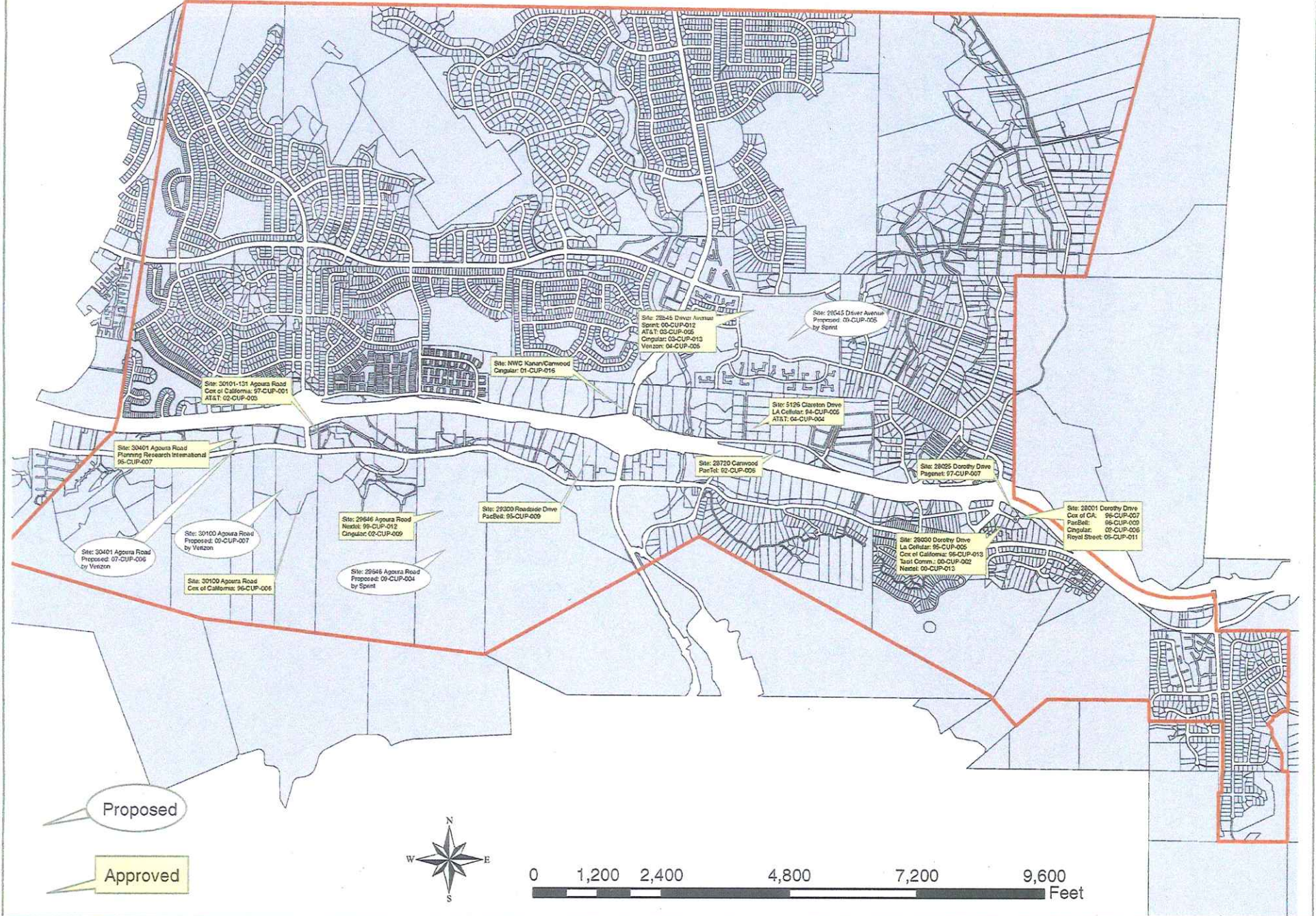


Approved and Proposed Wireless Telecommunication Facilities (As of April 2010)



Types of Wireless Facilities

Side Mounted on Building



1 - White panels side mounted on Agoura Town Center Building wall.

Enclosed in Building



2 – Facility to right of Renaissance Hotel sign, fully enclosed in building.

Roof Mounted Behind Parapet of Building



3 – Equipment screened by roof parapet wall on former Teradyne building.

Roof Mounted – Part of Architecture

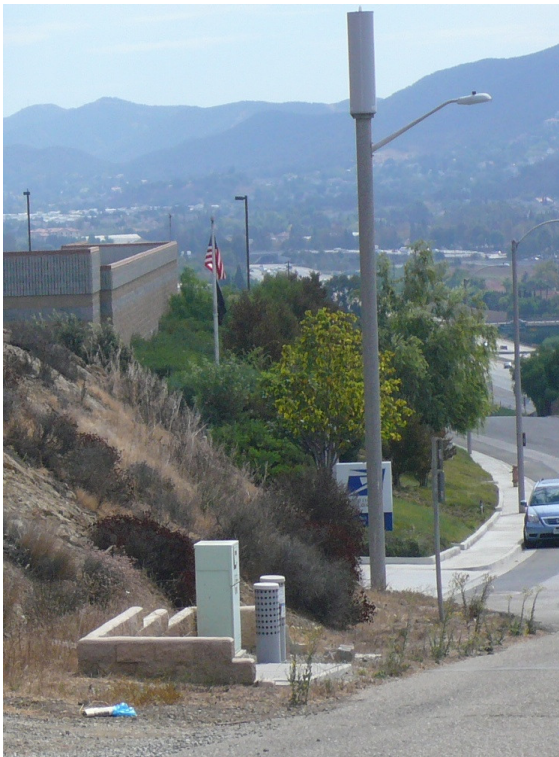


4 - Equipment enclosed behind parapet wall above “For Lease” sign, and a whip antenna at far corner of building, near trees.

Utility Pole



5 - Facility enclosed in cylinder on top of stadium lighting at Agoura High School.



6 – Facility enclosed in cylinder on top of light pole in Newbury Park. Note regular light pole to right of one in foreground. The accessory equipment is underground, except for electrical meter and vents.

Accessory Equipment



7 – Detail of accessory equipment underground, except for electrical meter and vents. Retaining wall protects structure.



8 - Facility enclosed in cylinder on top of light pole in ROW in City of Thousand Oaks. The accessory equipment is underground, except for electrical meter and vents, and includes decorative wall and landscaping.



9 – Accessory equipment above ground – not in City.

Other Towers



10 – Example of guyed tower – not in City.



11 – Example of lattice tower – not in City.

RESOLUTION NO. 11-1034

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT THE WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE NO. 11-387 AND RECOMMENDING THAT THE CITY COUNCIL ADOPT A NEGATIVE DECLARATION FOR THE PROJECT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE # 10-ZOA-001)

THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

WHEREAS, on October 14, 2009, the City Council adopted Ordinance No. 09-369U establishing a moratorium on wireless communication facilities in the City; and

WHEREAS, on November 10, 2009, Ordinance No. 09-370U extended that moratorium through September 25, 2010; and

WHEREAS, on August 25, 2010, Ordinance No. 10-378U further extended that moratorium, which is scheduled to expire on September 25, 2011; and

WHEREAS, the Planning Commission has considered Ordinance No. 11-387, which (i) amends the City's zoning code to provide a uniform and comprehensive set of standards and regulations, along with permit requirements, for the installation of wireless telecommunications facilities in the City, including installations on private property, public property, and in the public right-of-way by adding Division 11. Wireless Telecommunications Facilities to Part 2, Chapter 6 of Article IX of the Agoura Hills Municipal Code and making other conforming amendments to Article IX of the Agoura Hills Municipal Code, and (ii) ends the moratorium by repealing Ordinance Nos. 09-369U, 09-370U and 10-378U; and

WHEREAS, a duly noticed public hearing was held on July 7, 2011 at 6:30 p.m. in the City Hall Council Chambers, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid hearing was duly given; and

WHEREAS, evidence, both written and oral, was duly presented to and considered by the Planning Commission of the City of Agoura Hills at the aforesaid public hearing; and

WHEREAS, after close of the public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by City staff, the staff report, the recommendations, and all other pertinent documents and associated actions regarding the proposed ordinance amendment; and

WHEREAS, it is the intent of the City to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City that prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless telecommunications facilities; and

WHEREAS, Ordinance No. 11-387 provides standards necessary to preserve land uses and the public right-of-way in the City; to promote and protect the public health and safety, community welfare, visual resources and the aesthetic quality of the City consistent with the

goals, objectives and policies of the Agoura Hills General Plan; for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations; and to encourage new and more efficient technology in the provision of wireless telecommunications facilities; and

WHEREAS, Ordinance No. 11-387 is consistent with the Agoura Hills General Plan, including Goal U-6 and Policies U-6.1 and U-6.2 of the General Plan pertaining to telecommunication system access and availability, and the design and siting of facilities; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines promulgated thereunder, and the City's local CEQA Guidelines, City staff prepared an Initial Study of the potential environmental effects of Ordinance No. 11-387 and the Municipal Code amendments contained therein (the "Project"). On the basis of the Initial Study, City staff for the City of Agoura Hills, acting as Lead Agency, determined that there was no substantial evidence that the Project could have a significant effect on the environment; as a result, City staff prepared a Negative Declaration for the Project and provided public notice of the public comment period and of the intent to adopt the Negative Declaration; and

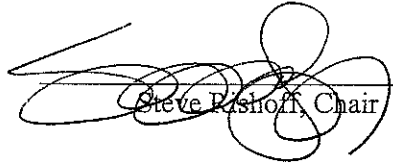
WHEREAS, the Planning Commission has independently reviewed (1) the Negative Declaration and Initial Study (both of which are attached hereto as Exhibit "A" and incorporated by this reference) and (2) all comments received, both written and oral, regarding the Negative Declaration and Initial Study, and based upon the whole record before it finds that those documents were prepared in compliance with CEQA, the CEQA Guidelines and the City's local CEQA Guidelines, that City staff has correctly concluded that there is no substantial evidence that the Project will have a significant effect on the environment, and that the findings contained therein represent the independent judgment and analysis of the Planning Commission. The Planning Commission has considered the contents of the Negative Declaration in its decision-making processes in making its recommendation on Ordinance No. 11-387; and

WHEREAS, the custodian of records for the Initial Study, Negative Declaration and all materials which constitute the record of proceedings upon which the Planning Commission's decision is based is the City Clerk of the City of Agoura Hills, and those documents are available for public review in the Office of the City Clerk located at 30001 Ladyface Court, Agoura Hills, California 91301.

NOW, THEREFORE, BE IT RESOLVED, based upon the findings and conclusions set forth above, that the Planning Commission of the City of Agoura Hills recommends that the City Council adopt Ordinance No. 11-387 and the Negative Declaration prepared for Ordinance No. 11-387.

PASSED, APPROVED AND ADOPTED this 7th day of July 2011, by the following vote to wit:

AYES: (5) Rishoff, Buckley-Weber, O'Meara, Moses, Justice
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)


Steve Rishoff, Chair

ATTEST:



Mike Kamino, Secretary

Exhibit A

Initial Study/Negative Declaration



*Wireless Telecommunications
Facilities Ordinance*

Final Initial Study/Negative Declaration

June 21, 2011

Wireless Telecommunications Facilities Ordinance

Final Initial Study/Negative Declaration

Prepared by:

City of Agoura Hills
Planning and Community Development Department
30001 Ladyface Court
Agoura Hills, CA 91301

Contact:
Allison Cook, Principal Planner
(805) 597-7310

June 21, 2011

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INTRODUCTION

This Initial Study/Negative Declaration (IS/ND) addresses the potential environmental effects from a Zoning Ordinance Amendment (ZOA) to establish standards and regulations, along with permitting requirements, applicable to the installation and modification of wireless telecommunications facilities in the City of Agoura Hills.

LEGAL AUTHORITY

This Initial Study/Negative Declaration has been prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines, the City's CEQA Guidelines, and relevant provisions of CEQA of 1970, as amended.

Initial Study. Section 15063(a) of the CEQA Guidelines provides that an Initial Study is the proper preliminary method of analyzing the potential environmental consequences of a project. The purposes of the Initial Study set forth in Section 15063(c) include in part:

- (1) To provide the Lead Agency with the necessary information to decide whether to prepare an Environmental Impact Report (EIR), a Negative Declaration (ND), or a Mitigated Negative Declaration (MND);
- (2) To enable the Lead Agency to modify a project, mitigating adverse impacts, thus avoiding the need to prepare an EIR; and
- (3) To provide documentation of the factual basis for the finding in a Negative Declaration, based on the record as a whole, that the project will not have a significant effect on the environment.

Negative Declaration or Mitigated Negative Declaration. Section 15070 of the CEQA Guidelines states that a public agency shall prepare a Negative Declaration or Mitigated Negative Declaration for a project subject to CEQA when:

- (1) The Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment; or
- (2) The Initial Study identifies a potentially significant effect on the environment; but
 - (b) Revisions in the project plans or proposals made by, or agreed to by, the applicant before a proposed Mitigated Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and
 - (c) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

EVALUATION OF ENVIRONMENTAL IMPACTS

(Requirements specified in CEQA Guidelines, Appendix G)

The following sections of this IS/ND provide discussions of the possible environmental effects of the proposed project for specific issue areas that have been identified in the CEQA Initial Study Checklist. For each issue area, potential effects are discussed and evaluated.

A "significant effect" is defined by Section 15382 of the CEQA Guidelines as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by a project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." According to the CEQA Guidelines, "an economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant."

The following information applies to the Initial Study Checklist:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact"

answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level.
- 5) Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c) (3) (D). In this case, a brief discussion should identify the following:
 - (a) Earlier Analysis Used. Identify and state where they are available for review.
 - (b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - (c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The analysis of each issue should identify: (a) the significance criteria or threshold used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to less than significance.

City of Agoura Hills

FINAL INITIAL STUDY/NEGATIVE DECLARATION

Project Title: Wireless Telecommunications Facilities Ordinance

Case Number: 10-ZOA-001

Lead Agency Name & Address: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

Contact Person and Phone #: Allison Cook, Principal Planner
818-597-7310

Project Location: The project is the adoption of an Ordinance, and is located Citywide.

Sponsor's Name & Address: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

General Plan Designation: Existing: NA
Proposed: NA

Zoning: Existing: NA
Proposed: NA

Project Description: The project is a Zoning Ordinance Amendment (ZOA) to adopt a Wireless Telecommunications Facilities Ordinance. Specifically, the Ordinance adds a new Division 11 to Part 2, Chapter 6 of Article IX (Zoning) of the Agoura Hills Municipal Code. A copy of the Ordinance is included as Attachment 1. The Ordinance would provide a uniform and comprehensive set of standards and regulations, along with permit requirements, for the installation of wireless telecommunications facilities (facilities) in the City. These include installations on private property, public property and in the public right-of-way (ROW). Currently, the Municipal Code allows wireless telecommunications facilities, upon approval of a Conditional Use Permit, in certain zoning districts, but there are no specific standards or requirements established for them.

Surrounding Land Uses & Setting: The project applies Citywide. The City is bordered by unincorporated Ventura County to the north; unincorporated Los Angeles County and the City of Calabasas to the east; unincorporated Los Angeles County to the south; and the City of Westlake Village to the west. See Figure 1 for the Location Map.

Other Public Agencies Whose Approval Is Required: None.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The proposed project may have an impact on the environmental factors listed below, and would have at least one "Potentially Significant Impact" on the environment as indicated by the checklist on the following pages.

Aesthetics	Greenhouse Gases	Population/Housing
Agricultural Resources	Hazards & Hazardous Materials	Public Services
Air Quality	Hydrology/Water Quality	Recreation
Biological Resources	Land Use/Planning	Transportation/Traffic
Cultural Resources	Mineral Resources	Utilities/Service Systems
Geology/Soils	Noise	Mandatory Findings of Significance

DETERMINATION

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	X
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	
I find that the proposed project MAY have a "potential significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	1
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards and (b) have been avoided or mitigated pursuant to an earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

Report Preparer:

Signature: _____

Name: Allison Cook

Title: Principal Planner
City of Agoura Hills

Date: April 27, 2011

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(1) LAND USE AND PLANNING. Would the project:

a) Physically divide an established community?				X
b) Conflict with an applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural communities conservation plan?				X

DISCUSSION:

- a) The project is an Ordinance that applies Citywide, and is therefore not a physical development capable of dividing an established community. As such, the project would result in **no impact**. Wireless telecommunications facilities (facilities) are currently allowed to be located in the City. The Ordinance would continue to allow the facilities, and would establish certain standards and requirements for their location. It is currently unknown where or when such facilities might be proposed, thus each individual proposal for a facility would be analyzed per CEQA, separate from this IS/ND.
- b) The Ordinance would be consistent with the General Plan, which calls for access to state of the art wireless technology resources and adequate coverage, while ensuring the appropriate design and location of wireless facilities. It is also consistent with General Plan policies to minimize visual impacts on the surrounding environment and neighborhood, and for facilities to be as unobtrusive as possible. (Goal U-6, Policies U-6.1 through U-6.3). The Ordinance amends the Municipal Code (Title IX) to establish appropriate standards and regulations for facilities, the facilities being already allowed in the Municipal Code in certain zoning districts of the City. The Ordinance provides that the facilities may not be located in locations prohibited by a Specific Plan. As noted above in Item a), it is speculative where and when new facilities will be proposed and each proposed facility would be analyzed per CEQA as an individual project application is proposed. Therefore, there would be **no impact** from the Ordinance adoption.
- c) There are no habitat conservation plans or natural communities conservation plans applicable to the City, or adjacent to the City, so the project would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(2) BIOLOGICAL RESOURCES. Would the project:

a) Have an adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U. S. Fish and Wildlife Service?				X
b) Have an adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U. S. Wildlife Service?				X

c) Have an adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere with the movement of any resident or migratory fish or wildlife species or with established native resident migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, other approved local, regional, or state habitat conservation plan?				X
g) Result in damage to, loss of, or removal of native oak trees or other locally identified specimen trees of significance?				X

DISCUSSION:

- a) The project consists of an Ordinance, and therefore is not a physical development that could adversely affect sensitive biological species. Therefore, there would be **no impact**. It is unknown where or when such facilities might be proposed, and any proposal to construct a facility would be analyzed separately under CEQA as part of project specific application and environmental review, which would need to consider the specific site's habitat further.
- b), c) Refer to the discussion above in Item a). The project is not a physical development that could adversely affect wetlands, riparian habitat or other sensitive natural communities regulated by the California Department of Fish and Game or the U.S. Fish and Wildlife Service or the Army Corps of Engineers. Therefore, there would be **no impact**. Any future proposals to develop facilities would be separate applications and projects under CEQA, and would undergo environmental review, including considering the site's particular habitat, as a specific proposal comes forward for review. Currently, it is unknown where or when such facilities might be proposed.
- d) Refer to the discussion in item a) above. Because the project is not a physical development, it does not have the potential to interfere with the movement of fish or wildlife. Any future proposal for a facility would be a separate project under CEQA, and would undergo environmental review, including considering wildlife movement, as a specific proposal comes forward for review. Therefore, there would be **no impact**.
- e), g) Since the project is not a proposal for a physical development in the City, there would be no impacts to oak trees in the area. The Ordinance does not alter existing ordinances that govern the protection of oak trees and includes provisions to facilitate the protection and preservation of trees. Any future proposals for facilities, the timing and location of which are speculative at this time, would be a separate application and project under CEQA, and at that time, oak trees would be considered. However, the Ordinance does not adversely affect the oak trees, and there would be **no impact**.
- f) There are no habitat conservation plans (HCPs) or Natural Communities Conservation Plans (NCCPs) or other conservation plans in or near the City, so there would be **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(3) **AIR QUALITY.** Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?				X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?				X
d) Expose sensitive receptors to substantial pollutant concentrations?				X
e) Create objectionable odors affecting a substantial number of people?				X

DISCUSSION:

- a)-c) The City of Agoura Hills is located within the South Coast Air Basin, and is governed by the South Coast Air Quality Management District (SCAQMD). Since the project is not a proposal for a physical development, there would be no impacts to air quality as a result of the Ordinance adoption. In any case, according to the Air Quality Management Plan (AQMP), a project must conform to the local General Plan and must not result in or contribute to an exceedance of the City's projected population growth forecast. As described in the discussion of Item (1) LAND USE AND PLANNING of this document, the Ordinance is consistent with the General Plan's goals and policies, and does not propose a type of development that was not anticipated in the General Plan. The location and timing of such future facilities are speculative. Thus, as each facility application is submitted and reviewed by the City, the project would be analyzed per CEQA, separate from this document, regarding potential air quality impacts from the particular project. Therefore, there would be no impact from adoption of the Ordinance. It should be noted, nonetheless, that wireless telecommunications facilities do not normally contribute substantially to pollutant concentrations.
- d)-e) The Ordinance does not include a physical development that could result in air quality emissions. Therefore, there would be no impact from the Ordinance adoption. It is unknown where and when such facilities might be proposed. As individual facilities projects are proposed, they would be assessed separately from this document as part of environmental review, including being evaluated for potential air quality impacts, such as exposing sensitive receptors to substantial pollution concentrations and creating objectionable odors. Also, as stated above in Items a)-c), it should be noted that wireless telecommunications facilities do not normally contribute substantially to pollutant concentrations nor do they create objectionable odors.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(4) CULTURAL RESOURCES. Would the project:

a) Cause an adverse change in the significance of a historical resource as defined in Section 15064.5?				X
b) Cause an adverse change in the significance of an archaeological resource pursuant to Section 15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X
e) Result in physical disruption of an identified sacred place or other ethnographically documented location of significance to native Californians?				X

DISCUSSION:

a)-e) The project is an Ordinance, not a physical development capable of impacting cultural resources that may exist on or under the ground. It is unknown at this time where and when such facilities might be proposed. Any proposal to construct a facility would be analyzed separately under CEQA as part of project specific environmental review as a proposal is submitted to the City, which would need to consider potential site specific cultural resources. The Ordinance does not contain any regulations, requirements or standards that would prevent the proper treatment of cultural resources, if found, under CEQA. Therefore, the Ordinance adoption would result in no impacts.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(5) GEOLOGY AND SOILS. Would the project:

a) Expose people or structures to potential adverse effects, including the risk of loss, injury or death involving:				X
(i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area, or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
(ii) Strong seismic ground shaking?				X
(iii) Seismic-related ground failure, including liquefaction?				X
(iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?				X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
d) Be located on expansive soil, as defined in Table 18-a-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?				X

DISCUSSION:

a)-e) Per the City's General Plan and Program EIR, there are no active or inactive faults within the City limits, and so potential hazard from fault rupture is remote. There are several active and/or potentially active faults in the surrounding region, however, that could produce ground shaking in the area. Other geologic or soil conditions are specific to individual sites. Nonetheless, the Ordinance is not a physical development with the potential for causing adverse impacts in the area of geology and soils. None of the proposed regulations, standards or requirements of the Ordinance would create general geologic or soils safety concerns. The timing and location of future facilities is speculative. Any proposal to construct a facility would need to be analyzed separately under CEQA as part of project specific environmental review. The site specific geologic and soils conditions and the type of facility would be assessed at that time for the actual development project. Therefore, the Ordinance adoption would result in no impact.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(6) GREENHOUSE GASES. Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly?				X
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X

DISCUSSION:

a)-b) The project is an Ordinance, and not a physical development capable of emitting greenhouse gases. It is unknown when or where facilities might be proposed in the future. Any proposal submitted to construct a facility would be analyzed separately under CEQA, and the potential for greenhouse gas emissions evaluated, as part of project specific environmental review. The Ordinance does not contain any provisions that are in conflict with plans or policies to reduce greenhouse gases, and the Ordinance does not conflict with the goals and policies of the General Plan to reduce emissions within the City boundaries to help mitigate the impact of climate change (Goal NR-10, Policies NR-10.1 – 10.3).

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(7) HAZARDS AND HAZARDOUS MATERIALS. Would the project:

a) Create a hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?				X
b) Create a hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of, or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wild lands?				X
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DISCUSSION:

a)-c) Because it is not a physical development proposal, the project would not result in the use of hazardous materials, nor their storage, disposal or transport. The project, being an Ordinance adoption, would also not cause an accidental release or upset of such materials. Any future facility proposal would be considered for potential hazardous effects as a separate project under CEQA, and would need to undergo separate project and environmental review per CEQA, aside from this IS/ND, where these issues would be further analyzed. Currently, the location and timing of such proposals is speculative. Therefore, the Ordinance adoption would result in **no impact**.

The Ordinance has been prepared in light of the following Federal Telecommunications Act requirement:

No state or local government or instrumentality thereof may 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 Commission's [Federal Communications Commission] regulations concerning such emissions. 47 U.S.C. 332©(7)(B)(iv)

The Ordinance requires that a technical report assessing the expected radio frequency emissions from a given facility be submitted as part of the application for approval. The radio frequency emissions must be found to be within the acceptable range pursuant to the Federal Communication Commission (FCC) standards prior to the City approving a project. The Ordinance includes measures to ensure that the emissions levels remain within FCC standards. It also includes measures to ensure that potential hazards from the facilities are minimized through design and development requirements, and includes provisions to ensure they are properly maintained.

d) Because it is not a physical development proposal, the Ordinance adoption would not result in a development located on a hazardous materials site compiled per Government Code Section 65962.5. As noted in the prior discussion items, any future proposed facility would be evaluated for potentially significant hazards as part of an individual application review and CEQA process, separate from this IS/ND. Therefore, the project would result in **no impact**.

e)-f) There are no airports or airstrips within or in the vicinity of the City. Therefore, the Ordinance would result in **no impact**.

g) The Ordinance, not being a physical development, would not interfere with an adopted emergency response plan or evacuation plan. The provisions of the Ordinance would not conflict with any emergency response or evacuation plan. Therefore, the project would result in **no impact**. In any case, the Ordinance contains provisions stipulating that no dangerous conditions or obstructions are allowed relating to wireless telecommunications facilities, including those affecting pedestrian and vehicular access. It is unknown where and when facilities might be proposed. As specific facility applications are proposed, they would be analyzed under separate CEQA review to ensure that they do not conflict with such plans. Additionally, the Ordinance specifically permits the use of "cells on wheels" during declared emergencies, facilitating communications during implementation of an emergency plan.

h) The project does not include a specific physical development proposal. The timing and location of any future facility is speculative. Any future facility proposal would be considered a separate project under CEQA, and would need to undergo separate project and environmental review. Therefore, the project would result in **no impacts**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(8) HYDROLOGY AND WATER QUALITY. Would the project:

a) Violate any water quality standards or waste discharge requirements?				X
b) Degrade groundwater supplies or interfere with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c) Alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding-on- or off site?				X
d) Create or contribute runoff which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				X
e) Otherwise degrade water quality?				X
f) Place housing within a 100-year floodplain, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
g) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
h) Expose people or structures to risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
i) Inundation by seiche, tsunami, or mudflow?				X

DISCUSSION:

a)-e), i) The Ordinance is not a physical development with the potential for causing adverse impacts in the areas of hydrology and water quality. Additionally, the Ordinance does not contain provisions that are in conflict with ensuring adequate hydrology resources and water quality in the City. As noted previously in this document, it is unknown where or when facilities might be proposed, and any proposal to construct a facility would undergo separate project and environmental review per CEQA, with any hydrology and water quality concerns assessed at that time. Therefore the project would result in no impact.

f)-h) The Ordinance adoption is not a physical development that could cause flood concerns. None of the proposed provisions in the Ordinance would conflict with providing adequate flood protection in the City. Each specific future facility proposal would be considered a separate project under CEQA that would undergo separate environmental review, including flood impact analysis. The timing and location of such future proposals is speculative. Therefore, the Ordinance adoption would result in no impact.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(9) AESTHETICS. Would the project:

a) Have an adverse affect on a scenic vista?				X
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b) Damage scenic resources including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Degrade the existing visual character or quality of the project site and its surroundings?				X
d) Create a new source of light or glare which would adversely affect day or nighttime views in the area?				X
e) Impact any existing streetscape or public space which has been designed to provide areas of public assembly and congregation?				X

DISCUSSION:

a)-e) The Ordinance contains several provisions to ensure that facilities are compatible with the character of Agoura Hills and that address the issue of aesthetics. In particular, these include: design and development standards (size, height, color, materials, blending methods, lighting, signage); monitoring and maintenance requirements; and location requirements. In particular, the Ordinance requires that no lighting be allowed related to a wireless telecommunications facility unless specifically required by a government agency, such as the Federal Aviation Administration. In any case, the project consists of an Ordinance, and is not a physical development proposal. The project does not involve any direct physical changes to the environment. For existing facilities, the Ordinance provides maintenance standards to ensure that existing facilities are maintained to avoid an aesthetic impact on the community. The Ordinance also has provisions for removal of abandoned facilities for the same reason. As such, it would result in **no impacts** to aesthetics with regard to scenic vistas, scenic resources, degrading the existing visual character, creating new sources of light or glare, or affecting areas of public assembly and congregation. The timing, extent and location of future facilities are speculative. Individual applications for facilities would be reviewed and assessed for CEQA consistency as they are submitted for review, separate from this IS/ND. At that time, the specific details of the facility being proposed and the physical changes would be assessed for aesthetic impacts per CEQA and also assessed for compliance with the provisions of the Ordinance.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(10) NOISE. Would the project:

a) Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X
c) A permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) An increase in ambient noise levels (including temporary or periodic) in the project vicinity above levels existing without the project?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

DISCUSSION:

- a),c),d) The project would not result in any physical development. It is unknown where or when facilities might be proposed, and any proposal for a facility in the City would be analyzed separately under CEQA as part of project specific environmental review. The site specific noise conditions and the type of facility would be assessed, as necessary, at that time. Therefore, the Ordinance adoption would result in **no impact**. In any case, the proposed Ordinance does not include any provisions that would conflict with the noise standards and requirements of the City, as outlined in the General Plan and Municipal Code. Rather, the Ordinance requires the preparation of a noise study as part of the facility application. It also contains specific noise standards and requirements, consistent with the General Plan and Municipal Code noise provisions, to minimize noise impacts from the facilities, including accessory equipment.
- b) Because it is not a physical development, the proposed project would not result in any impacts related to excessive groundborne vibration. Future development is speculative. As specific facilities are proposed, along with information about construction, these projects would need to undergo separate CEQA review, including analysis of this issue area. Therefore, there would be **no impact** from the Ordinance adoption.
- e), f) The City is not located within the vicinity of an airport or private airstrip, and would not be affected by air traffic noise impacts. There would be **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(11) POPULATION AND HOUSING. Would the project:

a) Result in direct or indirect population related growth inducement impacts (significantly expand employment opportunities, - remove policy impediments to growth, or contribute to potential extensions of growth inducing infrastructure)?				X
a) Displace existing housing, necessitating the construction of replacement housing elsewhere?				X

DISCUSSION:

- a),b) The Ordinance adoption does not consist of a physical development, and so would not cause increases in population or the displacement of exiting housing, nor induce growth. Individual proposals for facilities are not expected to include provisions for housing or employment, or otherwise impact population in the City. Nonetheless, as facility applications are processed through the City, environmental review per CEQA would be undertaken, including the evaluation of any potential impacts to population and housing from the specific proposal. The timing, extent and locations of such future proposals are speculative. Therefore, the Ordinance adoption would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(12) PUBLIC SERVICES. Would the project result in adverse physical impacts associated with the provision or construction of new or physically altered government facilities in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services?

a) Fire protection				X
b) Police protection				X
c) Schools				X
d) Parks				X

e) Other public facilities				X
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DISCUSSION:

a)-e) Since the project is an Ordinance adoption, not a development proposal, the project would not contribute to the demand for public facilities, such as fire protection, police protection, schools, and parks. There are no provisions of the Ordinance that would present conflicts with the continued provision of such services in the City, nor increase the demand for such facilities. Furthermore, the Ordinance includes security provisions for facilities to minimize the opportunity for unauthorized access, vandalism, etc. As an individual facility proposal comes forward, it would undergo site specific environmental review and be assessed for the above noted public services impacts. It is currently unknown where and when such facilities will be proposed. Therefore, there would be no impact from the Ordinance adoption.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(13) RECREATION. Would the project:

a) Increase the use of existing neighborhood or regional parks or other recreational facilities such that physical deterioration of the facility would occur or be accelerated?				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that could cause adverse impacts?				X

DISCUSSION:

a),b) Since the Ordinance adoption is not a particular development proposal, there would be no impacts to recreational facilities. The Ordinance includes no provisions that would conflict with the continued availability of recreational facilities in the City. It is unknown where and when wireless telecommunications facilities might be proposed. As individual facilities are proposed, separate CEQA review would be undertaken to determine the specific project's impact to recreation. It should be noted, however, that wireless telecommunications facilities do not contribute to the use or expansion of parks or other recreational facilities.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(14) TRANSPORTATION/TRAFFIC. Would the project:

a) Cause an increase in traffic beyond the capacity of the street system (i.e., result in an increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?				X
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in safety risks?				X

d) Increase hazards related to existing intersections or roadway design features (e.g., sharp curves or dangerous intersections), or to incompatible uses (e.g., residential traffic conflicts with farm equipment)?				X
e) Result in inadequate secondary or emergency access?				X
f) Result in inadequate parking capacity?				X

DISCUSSION:

- a) Since the project is not a particular development proposal, there would be no impacts to traffic and circulation. The Ordinance contains no provisions that would conflict with transportation and circulation in the City. However, the Ordinance contains provisions that would prevent obstructions in the ROW and impacts to pedestrian and vehicular flow. It is unknown where and when facilities might be proposed. As individual facility projects are proposed, separate CEQA review would be undertaken to determine the specific project's impacts to traffic and circulation.
- b) The Los Angeles County Congestion Management Plan (CMP) requires a regional traffic impact analysis when a project adds 150 or more trips in each direction to a freeway segment. Based on the discussion in item a) above, there would be no impacts.
- c) There are no airports or airfields in the project vicinity, so the Ordinance adoption would result in no impacts. Also refer to the discussion in item a) above.
- d),e),f) Refer to the discussion under item a) above. The Ordinance adoption would result in no impacts.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(15) UTILITIES AND SERVICE SYSTEMS. Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b) Require or result in construction of new water or wastewater treatment facilities or expansion of existing facilities that could cause adverse impacts?				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities that could cause adverse impacts?				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

DISCUSSION:

- a)-e) As the project is not a physical development proposal, it would not result in impacts to wastewater, water or stormwater. The Ordinance regulations would not conflict with the continued provision of water, waste water, solid waste or storm drain facilities in the City. While wireless telecommunications facilities normally do not effect issues of water supply, wastewater treatment, storm water drainage, or solid waste disposal,

as individual facility projects are proposed in the project area, separate CEQA review would be undertaken to determine, as necessary, the specific project's impacts to these services. It is currently unknown where and when facilities will be proposed. The current project would result in no impacts.

- f),g) As noted above, the Ordinance adoption would not constitute a development proposal, and so would not result in impacts to solid waste. The location and timing of future facilities is speculative. As individual facility projects are proposed, separate CEQA review would be undertaken to determine if the specific projects' impacts to these services is significant. The Ordinance adoption would result in no impacts.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(16) MANDATORY FINDINGS OF SIGNIFICANCE.

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects)?				X
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

DISCUSSION:

- a) The project is the adoption of an Ordinance, which is not a physical development. Where and when the wireless telecommunications facilities might be proposed is unknown at this time. When such a proposal is made, the facilities project would be analyzed as part of a separate, specific CEQA analysis, where the particular site and action would be assessed for its potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory. Therefore, adoption of the Ordinance would result in **no impact**.
- b) In all of the environmental issue areas discussed throughout this Initial Study, the adoption of the Ordinance was found to have no impacts. Therefore, there would be **no cumulatively considerable impacts** from the project as well.
- c) As noted above in Item b), in all of the environmental issue areas discussed throughout this Initial Study, the adoption of the Ordinance was found to have no impacts. Adoption of the Ordinance is not a physical development. As such, there would be **no impact** with regard to environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly. Where and when the wireless telecommunications facilities might be proposed is unknown at this time. When such a proposal is made, the facilities project would be analyzed as part of a separate, specific CEQA analysis, where the particular site and action would be assessed for its potential to cause substantial adverse impacts on human beings.

References:

Agoura Hills, City of. *General Plan 2035*. March 2010.

Agoura Hills, City of. *General Plan 2035 Final EIR*. February 2010.

Agoura Hills, City of. *Municipal Code*.

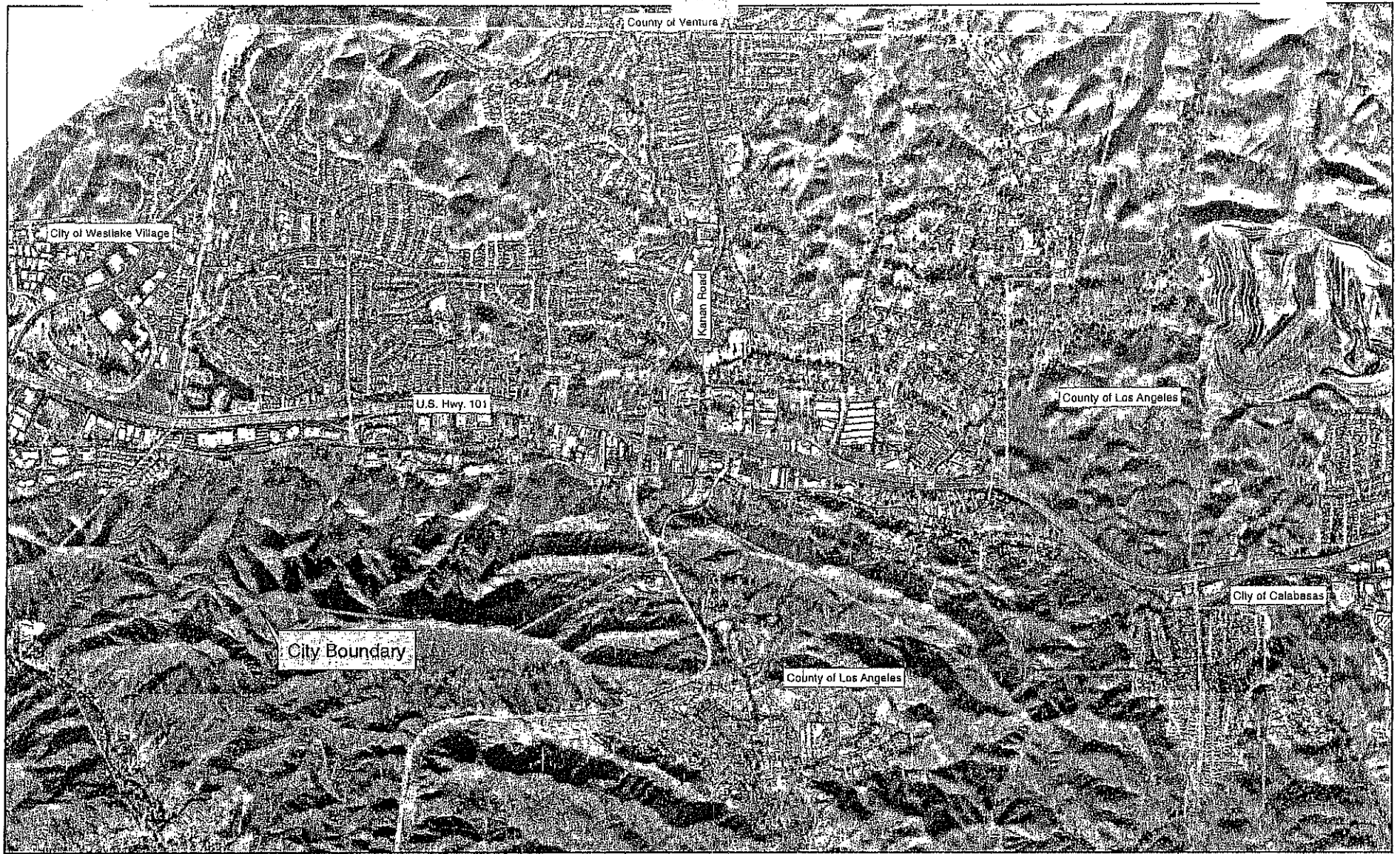
Federal Communications Commission. *A Local Government's Official Guide to Transmitting Antenna RF Emissions Safely: Rules Procedures, and Practical Guidelines*.

47 U.S.C. 332, Federal Communications Act.

PUBLIC COMMENTS AND RESPONSES TO COMMENTS

The Draft IS/ND was circulated for public comment from May 5, 2011 through June 6, 2011. One comment letter was received during this period, a letter from Dan Revetto, Director, AT&T California External Affairs (dated June 6, 2011). The letter and responses to the comments in the letter are included as Attachment 2 to this document. None of the comments in the letter, or the responses to the letter, warrant changes to the IS/ND.

Minor changes to the Wireless Telecommunications Facility Ordinance have been made for clarification purposes or to address comments received on the Ordinance itself. None of these revisions, however, change the Ordinance significantly, and no changes to, or recirculation of, the IS/ND are required. The proposed revised Ordinance is shown in "track changes" mode in Attachment 1 of this document.



April 2011

Figure 1

Wireless Telecommunications Facilities Ordinance Location Map - City of Agoura Hills



Attachment 1

Wireless Telecommunications Facilities Ordinance

DRAFT ORDINANCE NO. 11-387

AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING A NEW DIVISION 11 ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES" TO PART 2, CHAPTER 6 OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES, INCLUDING INSTALLATIONS IN THE PUBLIC RIGHT-OF-WAY, MAKING CONFORMING AMENDMENTS TO ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE, AND REPEALING ORDINANCE NO. 09-369U, AN INTERIM URGENCY ORDINANCE RELATING TO WIRELESS COMMUNICATION FACILITIES

A. Recitals.

(i) The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards and regulations, along with permit requirements, for the installation of wireless telecommunications facilities in the City, including installations on private property, public property and in the public right-of-way.

(ii) On October 14, 2009, the City Council adopted Ordinance No. 09-369U establishing a moratorium on wireless communication facilities in the City. On November 10, 2009, Ordinance No. 09-370U extended that moratorium through September 25, 2010. On August 25, 2010, Ordinance No. 10-378U further extended that moratorium, which is scheduled to expire on September 25, 2011.

(iii) On _____, the Planning Commission of the City of Agoura Hills held a duly noticed public hearing to consider Ordinance 11-387, and received testimony from City staff and all interested parties regarding the proposed amendments. Following the close of the public hearing, the Planning Commission adopted Resolution No. 11-___ recommending approval of Ordinance 11-387.

(iv) On _____, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the zoning code amendments contained herein as required by law, and received testimony from City staff and all interested parties regarding the proposed amendments.

(v) All legal prerequisites to the adoption of the Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review

A. Pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines promulgated thereunder, and the City's local CEQA Guidelines, City staff prepared an Initial Study of the potential environmental effects of this proposed Ordinance and the Municipal Code amendments contained herein (the "project"). On the basis of the Initial Study, City staff for the City of Agoura Hills, acting as Lead Agency, determined that there was no substantial evidence that the project could have a significant effect on the environment; as a result, City staff prepared a Negative Declaration for the project and provided public notice of the public comment period and of the intent to adopt the Negative Declaration.

B. The City Council has independently reviewed (1) the Negative Declaration and Initial Study (both of which are attached hereto as Exhibit "A" and incorporated by this reference) and (2) all comments received, both written and oral, regarding the Negative Declaration and Initial Study, and based upon the whole record before it finds that those documents were prepared in compliance with CEQA, the CEQA Guidelines and the City's local CEQA Guidelines, that City staff has correctly concluded that there is no substantial evidence that the project will have a significant effect on the environment, and that the findings contained therein represent the independent judgment and analysis of the City Council. Based on these findings, the City Council hereby approves and adopts the Negative Declaration for this project.

C. The custodian of records for the Initial Study, Negative Declaration and all materials which constitute the record of proceedings upon which the City Council's decision was based is the City Clerk of the City of Agoura Hills. Those documents are available for public review in the Office of the City Clerk located at 30001 Ladyface Court, Agoura Hills, California 91301.

SECTION 3. Ordinance No. 09-369U establishing a moratorium on wireless communication facilities and Ordinance Nos. 09-370U and 10-378U extending that moratorium are hereby repealed as of the effective date of this Ordinance.

SECTION 4. The "W" list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by replacing the "W" list in its entirety as follows:

W.	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
		CS	CRS	CR	BP-OR	BP-M
1.	Watches, sale, repair	X	X		E, G, U	G
2.	Welding shop					J
3.	Wholesale distributor's service					J
4.	Wholesale store		X			X
5.	Wig sales and service	X	X			
6.	Wireless telecommunications collocation facility	BB	BB	BB	BB	BB
7.	Wireless telecommunications facility	BB	BB	BB	BB	BB
8.	Winery sales facility/tasting room	W	W			W

The City Council is currently considering adoption of Ordinance No. 11-388. On the date that At such time as the City Council adopts Ordinance No. 11-388 becomes effective, and it is in effect, all references in Division 11 of the Agoura Hills Municipal Code to the "Specific Plan," or "SP" district shall be changed to "Planned Development" or "PD"; zoning districts "Commercial Neighborhood," or "CN," and "Commercial Shopping Center-Mixed Use," or "CS-MU," shall be added to the list of zoning districts in Sections 9661.5.A.2., 9661.5.A.2.a., 9661.20.A.1., 9661.20.A.3., and 9661.20.B.2.; and replacement of Items 7 and 8 of the "W" list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code shall be replaced with the following will take effect:

W.	USE, SERVICE OR FACILITY	COMMERCIAL					BUSINESS PARK	
		CS	CRS	CR	CN	CS-MU	BP-OR	BP-M
7.	Wireless telecommunications collocation facility	BB	BB	BB	BB	BB	BB	BB
8.	Wireless telecommunications facility	BB	BB	BB	BB	BB	BB	BB

SECTION 5. Item 19 in the "P" list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by deleting "a. Wireless Telecommunication Facilities" and "b. Other" and replacing Item 19 in its entirety as follows:

19.	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
		K	K	K	K, U	K
	Public utility and public service					

SECTION 6. Paragraph BB of Section 9312.3. Special conditions, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is amended by replacing "BB" in its entirety as follows:

BB. Permitted subject to issuance of either a minor conditional use permit or a conditional use permit as specified in Division 11 "Wireless Telecommunications Facilities" of this Part, beginning at section 9661 and subject to the required findings as stated in that Division.

SECTION 7. Division 11 "Wireless Telecommunications Facilities" is hereby added to Part 2, Chapter 6, Article IX of the Agoura Hills Municipal Code beginning at Section 9661 to read as follows:

"DIVISION 11. WIRELESS TELECOMMUNICATIONS FACILITIES

9661. Purpose.

The purpose and intent of this division is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This division provides standards necessary (1) for the

preservation of land uses and the public right-of-way in the city, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, and (4) to encourage new and more efficient technology in the provision of wireless telecommunications facilities.

9661.1 Definitions.

“Accessory equipment” means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“Antenna” means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

“Building-Mounted” means mounted to the side of a building, to the façade of a building, or similar structure, but not to include the roof of any structure.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“Collocation” means the addition of wireless telecommunications facilities to an existing wireless telecommunications facility so that one site is shared amongst the same or different carrier.

“COW” means a “cell on wheels,” which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

“Facility(ies)” means both wireless telecommunications facilities and wireless telecommunications collocation facilities, unless the context specifically limits it to one or the other.

“Ground-Mounted” means mounted to a telecommunications tower.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“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 trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

"Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

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

"Reviewing Authority" means the director or the planning commission, as applicable, who has the authority to review and either grant or deny a permit required by this division prior to installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility.

"Roof-Mounted" means mounted directly on the roof of any building or structure.

"Telecommunications tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

"Utility Pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

"Wireless telecommunications collocation facility" means a wireless telecommunications facility specifically designed for subsequent collocation as a permitted use as set forth in section 9661.10.

"Wireless telecommunications facility" means any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term "wireless telecommunications facility" does not apply to the following:

(a) A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission's Rules, or its successor regulation.

(b) Any antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or its successor regulation, including, but not limited to, direct-to-home satellite dishes that are less than one meter (39.37") in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.

(c) Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the Director.

- (d) Government owned and operated telecommunications facilities.
- (e) Emergency medical care provider-owned and operated telecommunications facilities.
- (f) Mobile services providing public information coverage of news events of a temporary nature.
- (g) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

9661.2 Applicability.

This division applies to all wireless telecommunications facilities and wireless telecommunications collocation facilities, as follows:

- A. All facilities for which applications were not approved prior to _____, shall be subject to and comply with all provisions of this division;
- B. All facilities for which applications were approved by the city prior to _____ shall not be required to obtain a new or amended permit until such time as a provision of this Code so requires. Any wireless telecommunication facility or wireless telecommunications collocation facility that was lawfully constructed prior to _____ that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of section 9711.
- C. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this division governing the operation and maintenance (section 9661.12), radio frequency emissions monitoring (section 9661.13), cessation of use and abandonment (section 9661.16), removal and restoration (section 9661.17) of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 9661.14); provided, however, that in the event a condition of approval conflicts with a provision of this division, the condition of approval shall control until the permit is amended or revoked.
- D. Notwithstanding (B) above, no modification shall be made to any facility that was approved prior to _____; unless the permits required by this division have been obtained from the city.

9661.3 Wireless Telecommunications Facility Permit Requirements.

- A. *Permit Required.* No wireless telecommunications facility or wireless telecommunications collocation facility shall be located within the city on any property, including the public right-of-way, unless the permits required by this division have been obtained from the city. No modification to a wireless telecommunications facility or wireless telecommunications collocation facility shall be made unless the permits required by this division have been obtained from the city.
- B. *Type of Permit Required.* Either a minor conditional use permit or a conditional use permit is required, depending upon location and type of facility proposed, as set forth in sections 9661.5, 9661.6, and 9661.10. If a facility has been permitted pursuant to a minor conditional use permit or a conditional use permit, any modification to the facility shall require either an amended permit, or if the type of permit required has changed, a new permit of the type set forth in this division.
- C. A wireless telecommunications facility, wireless telecommunications collocation facility, and/or a telecommunications tower or other wireless telecommunications support structure, which is built on speculation and for which there is no wireless tenant is prohibited within the city.

9661.4 Application for Permit.

- A. *Purpose.* This section sets forth the application submittal requirements for all permits required by this division. The purpose of this section is, in part, to ensure that this division is implemented to the full extent permitted by the Telecommunications Act of 1996.
- B. *Supplemental Application.* In addition to the information required of an applicant for a minor conditional use permit or conditional use permit, each applicant requesting approval of the installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, regardless of location, shall fully and completely submit to the city a written supplemental application on a form prepared by the director.
- C. *Supplemental Application Contents.* The supplemental application form shall request the following information, in addition to all other information determined necessary by the director:
 - 1. The name, address and telephone number of the owner and the operator of the proposed facility, if different from the applicant.
 - 2. The type of facility.
 - 3. If the applicant is an agent, a letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, a letter of authorization from the person or entity that will provide those services.

4. If the facility will be located on the property of someone other than the owner of the facility, written authorization by any and all property owners authorizing the placement of the facility on the property owner's property.
5. A full written description of the proposed facility, its purpose, and specifications, including the height and diameter of the facility, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site.
6. A detailed engineering plan of the proposed facility created by a qualified licensed engineer and in accordance with requirements set by the director, including a photograph and model name and number of each piece of equipment included.
7. A site plan containing the exact proposed location of the facility.
8. If the applicant requests an exception to the requirements of this division, the applicant shall provide all information and studies necessary for the city to evaluate that request.
9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations.
10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
11. For a facility that is not categorically excluded, the applicant shall also provide a technically detailed report certified by a qualified radio frequency engineer indicating the amount of radio frequency emissions expected from the proposed facility and associated accessory equipment, as well as the cumulative impacts of the other existing ~~and foreseeable facilities in the area~~ at the site to the extent permitted by federal law, including co-located facilities, and stating that emissions from the proposed facility individually and combined with the cumulative ~~effects~~ emissions of nearby on-site facilities will not exceed standards set by the Federal Communications Commission. The director may require that a city representative be present for verification testing, and that the applicant reimburse the city for its actual costs in observing and verifying that testing.
12. Documentation certifying that the applicant has obtained all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed in connection with the application.

13. A noise study prepared by a qualified acoustic engineer documenting the level of noise to be emitted by the proposed facility and its potential effects on surrounding uses.
 14. A conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.
 15. A description of the maintenance and monitoring program for the facility.
 16. A written description identifying the geographic service area for the subject installation, accompanied by a master plan, including maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities. The master plan shall reflect all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. ~~as well as longer range conceptual plans for a period of five years shall also be provided, if available.~~
 17. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and aesthetically desirable.
 18. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is 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.
 19. An application fee, a deposit for a consultant's review as set forth in paragraph D of this section, and a deposit for review by the city's attorney, in an amount set by resolution by the City Council.
 20. Any other information and/or studies determined necessary by the director may be required.
- D. *Independent Expert.* The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility or wireless telecommunications collocation facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility or wireless telecommunications collocation facility and shall address any or all of the following:
1. Compliance with applicable radio frequency emission standards;
 2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;

3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

E. *Story Poles.* At the discretion of the director, the applicant may be required to erect temporary story poles to demonstrate the height and mass of a potential facility.

9661.5 Requirements for Facilities Not within the Public Right-of-Way.

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way.

A. *Permit Required.*

1. BP-M District.
 - a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be building-mounted or roof-mounted in the BP-M district, or mounted to an existing telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a minor conditional use permit.
 - b. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be mounted to a new telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a conditional use permit.
2. BP-OR, CRS, CS, CR, SP, U, and SH districts.
 - a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility in the BP-OR, CRS, CS,

CR, SP, U, and SH districts, except for those locations listed in section 9661.20, shall require a conditional use permit.

3. All other districts, areas and locations.
 - a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located in a location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way shall be designed and maintained so as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.
 - a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area, and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods.
 - a. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
 - b. Site location and development shall preserve the pre-existing character of the site as much as possible, and facilities shall be designed and located where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening to minimize the visual impact and be compatible with existing architectural elements, building materials and other site characteristics.

- c. Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area.
4. Antennas. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be ~~fully camouflaged~~ concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.
 - a. Each building-mounted facility shall be ~~fully incorporated~~ into the design elements of the building architecture.
 - i. The width and height of the facility shall be the minimum functionally necessary.
 - ii. Each facility shall not exceed more than eighteen (18) inches out from the building façade or other support structure, and no cable or antenna mounting brackets or any other associated equipment or wires shall be visible above, below, or to the side of the facility.
 - iii. The reviewing authority may consider a projection of more than eighteen (18) inches if the projection is architecturally integrated with the design of the building or structure or if it is otherwise designed to minimize its visibility.
 - iv. Any building-mounted facility that is within one hundred (100) feet of a residential district shall be located on the building or structure as far from the nearest residential use as is feasible.
 - b. Each roof-mounted facility shall be located and designed in an area of the roof where the visual impact is minimized and shall be no taller than necessary to meet the operator's service requirements.
 - i. In no case shall roof-mounted equipment on a flat roof exceed the top of the parapet or the top of the mansard measured from the roofline, and on a slope roof shall not extend above the top of roofline.

- ii. Each roof-mounted facility shall also be screened from above if visible from higher elevations.
- iii. Any roof-mounted facility that is within one hundred (100) feet of a residential district shall be located on the roof of the building or structure as far from the nearest residential use as is feasible.

6. Ground-Mounted Facilities.

- a. Each ground-mounted facility shall be located in close proximity to existing above-ground utilities, such as electrical tower or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the city.
- b. Each ground-mounted facility shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet Federal Communications Commission requirements, and shall be no higher than the existing poles, structures or trees near the placement of the proposed ground-mounted facility location. Even if existing poles, structures or trees are higher, no ground-mounted facility shall exceed sixty (60) feet.
- c. All installations shall be properly engineered to withstand high wind loads; an evaluation of high wind load capacity shall include the impact of modification of an existing facility.
- d. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and/or shall be fully camouflaged or hidden.
- e. Each ground-mounted installation shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
- f. Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this subsection.
- g. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux

tree may be required depending on the type and design of faux tree proposed.

7. Accessory Equipment. All accessory equipment associated with the operation of any wireless telecommunications facility or wireless telecommunications collocation facility shall be located and screened in a manner that is designed to minimize its visibility to the greatest extent possible, including utilizing the following screening methods for the type of installation:
 - a. Accessory equipment for building-mounted or roof-mounted facilities may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for each roof-mounted facility shall be of a quality and design that is architecturally integrated with the design of the building or structure.
 - b. Accessory equipment for ground-mounted facilities shall be visually screened by locating the equipment within a nearby building or in an underground vault, with the exception of required electrical panels. If a building is not located near the facility or placement of the equipment in an existing building is not technically feasible, accessory equipment shall be located in an enclosed structure, and shall comply with the development and design standards of the zoning district in which the accessory equipment is located. The enclosed structure shall be architecturally treated and/or adequately screened from view by landscape plantings, walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.
8. Landscaping. Where appropriate, each facility 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. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.
9. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
10. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared

by a qualified lighting professional to evaluate potential impacts to adjacent properties.

11. Noise.

- a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
- b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.
- c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA at the facility's property line if the facility is located in a business, commercial, manufacturing, utility or school zone or a specific plan zone that permits those uses, provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
- d. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the facility's property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this Code.

12. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

13. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.
- ~~2. Where feasible, as new technology becomes available, the permittee shall (1) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Agoura Hills Municipal Code.~~
- 3-2. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within seven (7) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and Federal Communications Commission certification.
 - c. Name, address and telephone number of the property owner if different than the permittee.
- 4-3. Upon any transfer or assignment of the permit, the director may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing permit and all of its conditions of approval including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Telecommunications Commission and the California Public Utilities Commission. If the director determines that the proposed operation is not consistent with the existing permit, the director shall notify the permittee who shall either revise the application or apply for modification of the permit pursuant to the requirements of the Agoura Hills Municipal Code.
- 5-4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the city reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
- 6-5. At all times, all required notices and signs shall be posted on the site as required by the Federal Communications Commission and California Public Utilities

Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

7.6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the Federal Communications Commission and antenna height standards adopted by the Federal Aviation Administration, and shall timely submit all monitoring reports required pursuant to section 9661.13 of the Agoura Hills Municipal Code.

8.7. If the director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed Federal Communications Commission standards, the director may require post-installation testing, at permittee's expense, or the director may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer at other than the regularly required intervals specified in Section 9661.13 of the Agoura Hills Municipal Code, certifying that the facility is in compliance with such FCC standards.

9.8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the City of Agoura Hills Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.)

10.9. If a nearby property owner registers a noise complaint and such complaint is verified as valid by the city, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose that condition on the project after notice and a public hearing. (A condition incorporating the applicable noise limitations of this Chapter shall also be included in the conditions of approval.)

11.10. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines,

defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

~~12-11.~~ "Permittee" shall include the applicant and all successors in interest to this permit.

~~13-12.~~ A condition setting forth the permit expiration date in accordance with Section 9661.15 shall be included in the conditions of approval.

If a wireless telecommunications collocation facility is being approved, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

9661.6 Requirements for Facilities within the Public Right-of-Way

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located within the public right-of-way. For purposes of this section, "located within the public right-of-way" shall include any facility which in whole or in part, itself or as part of another structure, rests upon, in or over the public right-of-way.

A. *Permit Required.*

1. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way of arterial roadways, as identified in the general plan, except any locations listed in section 9661.20, shall require a conditional use permit.
2. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way and is in any location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.
3. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless collocation telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts

on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.
 - a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties all in a manner that achieves compatibility with the community.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
4. Antenna Mounts. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
5. Poles.
 - a. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.
 - b. No facility shall be located on a pole that is less than twenty five (25) feet in height.
 - c. Utility poles. The maximum height of any antenna shall not exceed twenty four (24) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than eighteen (18) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities

Commission general orders, including, but not limited to, General Order 95, as revised.

- d. Light poles. The maximum height of any antenna shall not exceed six (6) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than eighteen (18) feet above any drivable road surface.
 - e. Replacement poles. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible. If the replacement pole exceeds the height of the existing pole, the antenna(s) shall not extend above the top of the replacement pole for more than "X" feet, where "X" is calculated by subtracting the difference in height between the original and replacement poles from six feet.
 - f. Pole mounted equipment shall not exceed six (6) cubic feet in dimension.
 - g. All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet Federal Communications Commission requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this paragraph.
 - h. If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole, to the extent feasible, to prevent pole clustering in the public right-of-way.
 - i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the pole.
6. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
 7. Each facility shall be properly engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
 8. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the

public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 9661.14.

9. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
10. In no case shall any ground-mounted facility, above-ground accessory equipment, or walls, fences, landscaping or other screening methods be less than eighteen (18) inches from the front of curb.
11. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground.
12. Each facility shall be built in compliance with the Americans with Disabilities Act (ADA).
13. Accessory Equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground.
 - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground.
 - b. When above-ground is the only feasible location for a particular type of accessory equipment and cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be adequately screened and/or camouflaged.
14. Landscaping. Where appropriate, each facility 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. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.
15. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
16. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters

and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

17. Noise.

- a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
- b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.
- c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in a business, commercial, manufacturing, utility or school zone or a specific plan zone that permits those uses; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
- d. Any equipment that may emit noise that would be audible from beyond three (3) feet from the source of the noise shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this code.

18. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

19. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with all applicable provisions of this division, all facilities in the public right-of-way shall be subject to the conditions of approval set forth in subsection 9661.5(C), the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the city engineer for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
2. The permittee shall not transfer the permit to any person prior to completion of construction of the facility covered by the permit.
3. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.
4. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
5. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the

repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer, the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

6. Prior to issuance of a building permit, the applicant shall obtain the director's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten (10) foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size and type of tree, etc.), a radius greater than ten (10) feet may be required by the director.
7. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.
8. Indemnification. To the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third

parties against the city for any bodily or personal injury, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

9. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within thirty (30) days of such service being offered and reasonably restore the area to its prior condition.
10. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Code, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.
11. Prior to the issuance of any encroachment or building permits, permittee shall enter into a right-of-way agreement with the city in accordance with Agoura Hills Municipal Code Section 9661.8.

If a wireless telecommunications collocation facility is being approved, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

9661.7 Findings.

A. In addition to findings necessary to approve a conditional use permit or minor conditional use permit, as applicable, no permit shall be granted for a wireless telecommunications facility or a wireless telecommunications collocation facility unless all of the following findings are made by the reviewing authority:

1. The proposed facility has been designed and located in compliance with all applicable provisions of this division.
2. The proposed facility has been designed and located to achieve compatibility with the community.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this division.

B. In addition to the findings in (A) above, approval of a permit for a wireless telecommunications facility or a wireless telecommunications collocation facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way and existing subterranean infrastructure and will not interfere with the city's plans for modification of such location and infrastructure.

9661.8 Agreement for Facilities on City-Owned Property or Public Right-of-way.

A. No approval granted under this division for locating facilities on city-owned property or in the public right-of-way shall be effective until the applicant and the city have executed a written agreement establishing the particular terms and provisions under which the right to occupy city-owned property or the public right-of-way, or both, shall be used or maintained. Such agreement shall include, but not be limited to, the following:

1. Inspection and maintenance requirements.
2. Indemnification of the city.

3. Insurance requirements.
4. Waiver of monetary damages against the city.
5. Removal, restoration and clean-up requirements.
6. Requirement to pay possessory interest taxes, if any.

9661.9 Nonexclusive grant.

No approval granted under this division shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

9661.10 Wireless Telecommunications Collocation Facilities

- A. *Purpose.* The purpose of this section is to comply with the requirements of California Government Code Section 65850.6. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted-use. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.
- B. In addition to any other permit required by this Code, a wireless telecommunications collocation facility shall be subject to either a minor conditional use permit or a conditional use permit as provided for in this division.
- C. All requirements, regulations and standards set forth in this division for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:
 1. The applicant for a wireless telecommunications collocation facility permit shall answer each question or request on the supplemental application provided for in section 9661.4 of this division so as to describe or depict:
 - a. the wireless telecommunications collocation facility as it will be initially built, and
 - b. all collocations at full build-out, including, but not limited to, all antennas, antenna support structures and accessory equipment.
 2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.

3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.
- D. Notwithstanding any other provision of this division, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use if:
1. The wireless telecommunications collocation facility:
 - a. was approved after January 1, 2007 by discretionary permit;
 - b. was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and
 - c. otherwise complies with the requirements of Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this division and the conditions of approval in the wireless telecommunications collocation facility permit; and
 - d. provided, however, only those collocations that were specifically considered when the relevant environmental document was prepared are a permitted use.
 2. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permit(s); as required pursuant to this Code.
- E. Although subsequent collocation under the conditions specified in paragraph (D) above is a permitted use, the owner of the facilities that will be collocated may voluntarily submit a wireless telecommunications facility application for the proposed collocation for the director's determination whether the collocation is a permitted use that meets the requirements of this division. Any collocation facility that does not meet the requirements of this division and is installed without first obtaining a wireless telecommunications permit is subject to immediate abatement and all other remedies available to the city pursuant to this Code.
- F. Except as otherwise provided above, approval of a new or amended facility permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:
1. Increases the height of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or

2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

9661.11 Emergency Deployment.

A COW shall be permitted in all zoning districts for the duration of an emergency declared by the city or at the discretion of the director.

9661.12 Operation and Maintenance Standards.

All wireless telecommunications facilities and wireless telecommunications collocation facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours (i) after discovery of the need by the permittee, owner, operator or any designated maintenance agent or (ii) after permittee, owner, operator or any designated maintenance agent receives notification from a resident or the director.

- A. Each permittee of a wireless telecommunications facility or wireless telecommunications collocation facilities shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.
- B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored or damaged artificial foliage or other camouflage;
 6. Graffiti, bills, stickers, advertisements, litter and debris;
 7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- C. Graffiti shall be removed from a facility as soon as practicable, and in no instance more than twenty-four (24) hours from the time of notification by the city.

- D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.
- E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- F. Each facility shall be operated and maintained to comply at all times with the noise standards of this Code and the facility's conditions of approval, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the director. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
- G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
- H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

9661.13 RF Emissions and Other Monitoring Requirements.

The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every two years from the date the facility began operations, a technically sufficient report ("monitoring report") that demonstrates the following:

- A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;
- B. The facility is in compliance with all provisions of this section and its conditions of approval.
- C. The bandwidth of the facility has not been changed since the original application or last report, as applicable, and if it has, a full written description of that change.

9661.14 No Dangerous Condition or Obstructions Allowed

No person shall install, use or maintain any wireless telecommunications facility or wireless telecommunications collocation facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or

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

9661.15 Permit Expiration.

- A. A permit for any wireless telecommunications facility or wireless telecommunication collocation facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of ten (10) years no sooner than six (6) months prior to expiration of the permit; provided, however, if a request to modify an existing permit for a facility is submitted during the last two (2) years of a ten (10) year permit, the permittee may request an extension at that time.
- C. If feasible at the time of permit expiration, the permittee shall (1) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less-visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Agoura Hills Municipal Code.

~~C-D.~~ _____ If a permit has not expired at the time application is made for an extension, the director may administratively extend the term of the permit for subsequent ten (10) year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of this Code that are in effect at the time the permit extension is granted.

1. At the director's discretion, additional studies and information may be required of the applicant.
2. If the director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of this Code that are then in effect at the time of permit expiration, the director shall refer the extension request to the appropriate reviewing authority.
3. The reviewing authority and public hearing procedures for such extension requests shall be the same as if a new permit was requested. After notice and a public hearing, the reviewing authority may approve, conditionally approve or deny the extension.

~~D-E.~~ _____ The request for an extension shall be decided by the planning commission if the permit expired before the application is made for an extension or if the director refers the matter to the planning

commission. After notice and a public hearing, the planning commission may approve, conditionally approve or deny the extension.

9661.16 Cessation of Use or Abandonment

- A. A wireless telecommunications facility or wireless telecommunications collocation facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.
- C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
 - 1. Prosecution;
 - 2. Revocation or modification of the permit;
 - 3. Calling of any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this Code.

9661.17 Removal and Restoration – Permit Expiration, Revocation or Abandonment

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility or wireless telecommunications collocation facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within thirty (30) days after expiration, earlier termination or revocation of the

permit, or abandonment of the facility, shall be a violation of this Code, and be grounds for:

1. Prosecution;
2. Calling of any bond or other assurance required by this division or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
4. Any other remedies permitted under this Code.

C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility or wireless telecommunications collocation facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by City.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

9661.18 Appeals.

- A. Any aggrieved person may appeal a decision of the director made pursuant to this division to the planning commission.
- B. Any aggrieved person may appeal a decision of the planning commission made pursuant to this division to the city council.

9661.19 Exceptions.

- A. Exceptions pertaining to any provision of this division, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority at a noticed public hearing if the reviewing authority makes the finding that (i) denial of the facility as proposed would violate state and/or federal law, or (ii) a provision of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit or wireless telecommunications facility collocation permit.
- B. Notwithstanding any other provision of this division, a conditional use permit shall be required for a facility when an exception is requested.
- C. The applicant shall have the burden of proving that denial of the facility as-proposed would violate state and/or federal law, or the provisions of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law, using the evidentiary standards required by that law at issue. The city shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

9661.20 Location Restrictions.

- A. *Locations Requiring an Exception.* Wireless telecommunications facilities and wireless-telecommunications collocation facilities shall not locate in any of the following districts, areas or locations without an exception:
 - 1. Zoning districts other than BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts; provided however, facilities may be located in the public right-of-way of arterial roadways within those other districts without an exception;
 - 2. Public right-of-way of collector roadways as identified in the general plan;
 - 3. Public right-of-way of local streets as identified in the general plan if within the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts;
 - 4. ~~4.~~ Public right-of-way if mounted to a new pole that is not replacing an existing pole, regardless of location; ~~or~~
 - 5. Building-mounted or roof-mounted on a building owned in common by a homeowners' association, even if located in a residential zone; or
 - 6. A ground mounted facility that is not in the right-of-way but is within one hundred (100) feet of a residential district in the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts.

6.5. 7. Notwithstanding any of the above, no facility shall locate within OS-DR or OS-R zoning districts, including the public right-of-way of arterial or collector roadways within those districts, without an exception; provided, however, applicant must also obtain approval pursuant to sections 9487 and 9821.5 of this Code.

B. *No Exception Allowed.* Notwithstanding the provisions of section 9661.19, in no case shall an exception be granted for the location of a wireless telecommunications facility or wireless telecommunications collocation facility in any of the following districts, areas or locations:

1. Any location within a residential district, with the exception of the public right-of-way of arterial or collector roadways and those locations set forth in section 9661.20(A)(5);
2. Any public right-of-way location within one hundred (100) feet from a residential district, with the exception of (i) the public right-of-way of arterial or collector roadways, or (ii) ~~building mounted facilities or roof mounted facilities in the BP-M, BP OR, CRS, CS, CR, SP, U, or SH districts;~~
3. Any location that would significantly obstruct or diminish views in scenic corridors;
4. Any location on or near a ridgeline such that the facility would appear silhouetted against the sky; or
5. Specific Plan zones in any location where the zone or specific plan prohibits such facilities.

C. If a district, area or location could qualify as both a permissible location and a location enumerated in this section, it shall be deemed a location covered by this section and the provisions of this section shall control. If a district, area or location could qualify as either a location requiring an exception pursuant to paragraph (A) of this section or a location in which no exception is allowed pursuant to paragraph (B) of this section, it shall be deemed a location covered by paragraph (B) and no exception shall be granted.

9661.21 Effect on Other Ordinances.

Compliance with the provisions of this division shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this division shall control.

9661.22 Effect of State or Federal Law.

A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities or wireless telecommunication collocation facilities, the permits required by this division for those facilities shall be deemed to be ministerial permits. Such a determination by the

city attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a minor conditional use permit or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, and all provisions of this division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.

- B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record."

SECTION 8. Part 12 Nonconforming Wireless Telecommunications Facilities is hereby added to Chapter 7, Article IX of the Agoura Hills Municipal Code to read as follows:

PART 12. NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES

"9711. Nonconforming Wireless Telecommunications Facilities and Wireless Telecommunications Collocation Facilities

- A. Nonconforming wireless telecommunications facilities and/or nonconforming wireless telecommunications collocation facilities are those facilities that do not conform to division 11 of part 2 of chapter 6 of article IX of this Code.
- B. Nonconforming wireless telecommunications facilities and wireless telecommunications collocation facilities shall, within ten (10) years from the date such facility becomes nonconforming, bring the facility into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time.
- C. When a nonconforming wireless telecommunications facility or wireless telecommunications collocation facility is abandoned or vacated for a continuous period of ninety (90) days or more days, such facility shall conform to the regulations of the district in which the property is located or shall be removed in accordance with section 9661.17 of this Code if it cannot be made to conform.
- D. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if

any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property."

SECTION 9. Section 9804.3 of Part 1, Division 4, Article IX of the Agoura Hills Municipal Code is hereby amended in its entirety as follows:

"9804.3 Zoning administrator public hearings.

A. The following matters shall be considered by the director after a public hearing:

1. Minor modifications; and
2. Minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.
3. Amendments to minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.

B. The director shall make the same findings required for a conditional use permit before approving or amending a minor conditional use permit. The procedures set forth in division 3 of part 3 of chapter 6 of this article applicable to conditional use permits shall apply to minor conditional use permits, except that where the planning commission is authorized to perform certain acts, the provision shall instead be read to authorize the director to perform those acts, and where the city council is authorized to perform certain acts, the provision shall be read to authorize the planning commission to perform those acts; provided, however, that any appeal of the director's decision decided by the planning commission may be appealed to the city council within the prescribed fifteen-day period. Furthermore, any hearing on a proposed revocation shall be before the planning commission and appealable to the city council."

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall go into effect on the 31st day after its passage.

SECTION 12. Certification. The city clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2011, by the following vote to wit:

Harry Schwarz
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele
City Attorney

Attachment 2

Comment Letter and Responses to Comments



CITY OF AGOURA HILLS

2011 JUN -6 PM 4: 01

CITY CLERK

Via Electronic Mail: acook@ci.agoura-hills.ca.us.

AT&T California
1150 South Olive Street
Room 2801
Los Angeles, CA 90015

1

and Via Hand Delivery

June 6, 2011

Ms. Allison Cook,
Principal Planner,
City of Agoura Hills,
Planning and Community Development
Department, 30001 Ladyface Court,
Agoura Hills, CA 91301

Re: Initial Study/ Negative Declaration (IS/ND) for the City of Agoura
Hills Wireless Telecommunications Facilities Ordinance

Dear Ms. Cook:

On behalf of New Cingular Wireless PCS, LLC dba AT&T Mobility (hereinafter
"AT&T" or "AT&T Mobility"), this letter and its enclosure are submitted as a comment on the
above-referenced draft Initial Study/ Negative Declaration (IS/ND).

For reasons described in the enclosure, AT&T objects to the adoption of the draft IS/ND
and approval of the proposed ordinance until such time as the City adequately addresses AT&T's
concerns. Without limitation as to the issues addressed in the enclosure, AT&T believes that the
draft IS/ND fails to describe and analyze the reasonably foreseeable impacts of the proposed
project.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the
deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain
authority that is exclusive and which preempts conflicting acts by state or local governments. At
Section 332(c)(3)(7), the Act, while recognizing that local zoning authority is preserved, requires
that local regulation not "unreasonably discriminate among providers of functionally equivalent
services" and not "prohibit or have the effect of prohibiting the provision of personal wireless
services."

California state law also impacts placement of communication facilities within the public rights-
of-way. As you are aware, wireless and wireline carriers, as "telephone corporations," have
access rights to the public rights-of-way under Section 7901 of the California Public Utility
Code. A telephone corporation enjoys a vested right under Section 7901 to construct "telephone
lines" and "necessary fixtures" "along and upon any public road." California courts have long

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upheld this vested right to enter and use the public right-of-way. In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise "reasonable control as to the time, place and manner in which roads . . . are accessed." Section 7901.1(b) provides that any municipal regulations "at a minimum, be applied to all entities in an equivalent manner," thereby imposing a duty on the City to regulate in a non-discriminatory manner.

ISSUES

Among the issues identified that must be addressed are:

1) The proposed ordinance indicates that any modification will require at least a minor CUP application and possibly even a full CUP application. Even an antenna swap presumably would require such an application process. Our experience in the Southern California market suggests that this process could be lengthy and upwards of 12 months or so including the Building Permit process. This ordinance also apparently requires stealthing/screening of all sites, including sites which are going to be modified. (Section 9661.3, 9661.4, 9661.5). This would impose unnecessary additional expenses in some cases.

2) There is a 10 year sunset clause on all approvals, where a renewal of such approval will be required and all sites will have to conform to the ordinance at the time of renewal. (Section 9661.15). This proposed requirement is not imposed on other property uses.

3) Some requirements of the CUP application may require carriers to disclose proprietary information such as the carrier master build plan for the City of Agoura Hills. (Section 9661.4 #16) Some of the material required is proprietary. Other required information either isn't available or is for too long a time period.

4) Carriers are to submit RF emission tests of proposed facilities including the cumulative effect from nearby sites. This includes any site even from other carriers. (Section 9661.4 #11). This requirement is preempted by the Telecom Act.

5) City's may use various experts to contest carrier findings, all at carrier cost. There appears to be no limit on the use of such experts. It is at discretion of the Planning Director. (Section 9661.4 D)

6) City can require applicants to construct full mock ups of any proposed facility. (Section 9661.4 E). This requirement could impose substantial additional costs with no attendant benefit to city residents.

7) There are various noise conditions that must be met that appear to single out wireless facilities without reason. (Section 9661.5 #11)

8) It appears that the City is enforcing the CUP application process in the Public ROW. (Section 9661.6). This appears to be inconsistent with AT&T's understanding of applicable law, including Section 7901.1 of the Public Utilities Code.

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9) There is a height limitation in the proposed ordinance at a maximum height of 60 feet. (Section 9661.5 #B 6 (b)). This limitation could make it impossible to serve some parts of the city.

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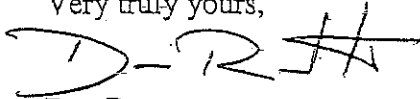
10) City appears to want to stealth or screen all cables, equipment, etc. and use underground stealthing if possible. This could mean the use of underground vaults in many instances, thus substantially increasing costs and creating maintenance and service issues. (Section 9661.5 #B (7)).

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The cited provisions would add substantial time and expense to deployment of wireless facilities in the city, with possible commercial and public safety consequences. AT&T requests that the draft IS/ND and proposed ordinance be modified to address these and the other concerns as identified in the enclosure. AT&T is eager to discuss these concerns further with the City and would be pleased to work with the City toward that end. If you have any questions about these comments, please contact me at (213) 743-7013.

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Very truly yours,



Dan Revetto
Director, AT&T External Affairs
1150 S. Olive St., Suite 2801
Los Angeles, CA 90015

Enclosure

COMMENTS ON PROPOSED ORDINANCE # 11:

"A new Division 11 entitled "THE WIRELESS TELECOMMUNICATIONS FACILITIES" to Part 2, Chapter 6 of Article IX (Zoning) of the Agoura Hills Municipal Code

Comments and questions are noted in bold, italicized language below.

9661.2

Regardless of date approved, Facility immediately subject to these sections of Ord11:

- 9661.13 radio frequency emissions monitoring (owners of facility must submit a monitoring report every two years showing the facility is in compliance w/ federal regulations, the facility is in compliance with provisions of this section and it s condition of approval, and the bandwidth of the facility has not been since the original application or last report)

Foregoing may be precluded by Telecom Act

All modifications require a minor condition use permit or condition use permit.

This would impose substantial unnecessary delays and expense on relatively minor projects.

§9661.3 - WTF Permit Requirements – any modification requires an amended permit.

§9661.4 – Application for Permit

Some new requirements which are non-standard requirements and appear to be problematic.

9) accurate visual impact analysis showing max. silhouette, viewshed analysis, color and finish palette, proposed screening, & scaled photo simulations. *(Most sites in this jurisdiction would require stealthing- this isn't always necessary);*

11) If not categorically excluded, a technically detained report certified by qual. radio frequency engineer indicating: amount of RF emissions expected, the cumulative impacts of other existing and foreseeable facilities in the area, and stating that emissions from proposed Facility individually and combined w/ cumulative effects of nearby facilities will not exceed FCC standards. Director may require City rep to be present for verification testing, and that applicant pay City costs for observing and verifying. *This requirement may go beyond the scope of AT&T/carrier's proposed site. Some of this information may not be obtainable by AT&T/Carriers. It is difficult to ascertain foreseeable facilities in the area. This requirement also goes beyond City's authority under the Telecom Act.*

15) Description of maintenance and monitoring program/plan. *This would impose new and unnecessary requirements, involving additional expenses with no benefit to*

community. 16) written description identifying the geographic service area for the subj. install, and master plan that identifies location of the proposed facility in relation to all existing and planned facilities maintained by each applicant, owner and operator, if different. Master plan to reflect all locations anticipated for new construction and/or MODs to existing, w/in 20 years of app submittal, and long range concepts for 5 years. (This may be proprietary information.).

Build plans of this sort would be speculative and of no value to decision-makers ;
and

20) any other info or studies determined by Director may be required. (*Significant discretionary power for planning director.*)

D. Independent Expert. Director is authorized to retain for City an independent qualified consultant to review technical aspects of any application for permit for WTF or WTCF, addressing the following (*all of these experts are at the cost of applicant*), with no cap on such expenses:

1. compliance with RF emissions standards (*proscribed by Federal law*);
2. Whether requested exception is necessary;
3. accuracy and completeness of submissions;
4. technical demonstration of unavailability of alternative sites/configurations and/or coverage analysis;
5. the applicability of analysis techniques and methodologies;
6. the validity of conclusions reached/claims made by applicant;
7. the viability of alternative sites and alternative designs;
8. any other specific issues designated by City.

Cost of review to be paid by applicant per fee schedule resolution. *No cap on these costs?*

E. Story Poles. At DISCRETION OF DIRECTOR, applicant may be req'd to erect temporary story poles to demonstrate height and mass of potential facility. *Unnecessary costs added to project, not required of other land users.*

\$9661.5 - req'ts for FACILITIES NOT WITHIN THE PUBLIC RIGHT OF WAY.

Applies to all facilities.

A. Permit required.

B. Design & Development Standards. All WTF or WTCFs located outside the Public ROW must be designed & maintained so as to minimize visual, noise, and other impacts on the surrounding community, and must be planned, designed, located, and erected according to the following:

1. General Guidelines. *Stealthing required on all sites. As noted above, Stealthing shouldn't always be required. If facility not visible to public, not Stealthing should be required.*

6. Ground mounted facilities - *These limitations could make it impossible to serve some parts of the city.*

a. must be located in close prox. to existing above ground utilities & in areas where they won't detract from the appearance of City

b. must be designed as minimum functional height and width required to adequately support proposed facility & meet FCC requirements, AND no higher than nearby existing poles, structures or trees or 60 feet, whichever is lower.

d. ALL cables run w/in interior of telecom tower and/or must be fully camouflaged or hidden

7. Accessory Equipment – ALL accessory equip. assoc. w/ WTF&CFs located & screened to minimize its visibility to max. possible.

11. NOISE –

Is this consistent with requirements for other land uses?

a. ALL facilities must be operated to minimize disruption by noise-

b. back-up generators ONLY USED during periods of power outage; no testing during weekends/holidays, or b/t hours of 7pm & 7am.

c. if Facility located in business, commercial, manufacturing, utility or school zone, or planned-development zone permitting those uses, Exterior noise max. = 55 dB at facility property line. ANY facility located w/in 500 feet of any property-zoned residential or improved w/ a residential use, noise cannot be audible at the residential property line. ANY facility located w/in residential zone, noise cannot be audible at res. property line-

d. ALL air conditioning units/any other equip that makes noise that would be audible from beyond facility's property line must be enclosed or equipped w. noise attenuation devices to ensure compliance under this Code.

13. MODIFICATIONS.

Is this required of any other land use?

At time of MODIFICATION of WTF&CFs, existing equipment must be replaced, to extent feasible, w/ equipment that reduces visual, noise and other impacts, including undergrounding and replacing big w/ smaller--

C. Conditions of Approval – in addition to design and development standards, ALL facilities subject to following conditions of approval or any amendments thereto by RA (reviewing authority)

2. if feasible, as new tech becomes available, must (1) place above ground facilities below ground, including but not limited accessory equipment mounted to tower or on ground, AND (2) replace larger/visually intrusive facilities w/ smaller/less intrusive facilities after receiving all permits and applications required by Agoura Hills Muni Code. *Is this required of any other land use?*

10. If nearby property owner files noise complaint and it is verified by CITY, CITY can hire consultant to review at permittee's expense. If D determines sound attenuation measures are required for compliance, D may impose new conditions after notice and public hearing. Applicable noise limitations must be in the conditions of approval. *Is this required of any other land use?*

11. Permittee Indemnity Clause – including but not limited attorney fees, City to notify Permittee of any claim. CITY has option of coordinating defense including but not limited to choosing counsel. *Is this required of any other land use?*

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9661.6 Requirements for Facilities w/in PROW – here, “located w/in the PROW” includes any facility in whole or in part that rests upon, in or over the PROW.

Much of the following appears to be inconsistent with restrictions of 7901.1.

A. PERMIT REQ'D

1. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW of arterial roadways, exceptions listed in 9661.20, require a CUP.

2. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW and is listed in section 9661.20(A) requires a CUP & an Approval of Exception.

3. need to prove right to use PROW.

B. Design & Development Standards – All WTF&CF in the PROW REQUIRES STEALTHING.

1. General Guidelines

a. screen and camouflage techniques in placement of facility to make as visually inconspicuous as possible, prevent from dominating surrounding area, hide facility from predominant views in way that achieves compatibility.

b. screening must be architecturally compatible w/ surrounding to minimize visual impact as well as be compatible w/ architectural character.

2. Traffic Safety – All designed to avoid adverse impacts on traffic

3. Blending methods – aterials

4. ANTENNA MOUNTS – must use the least visible antennas to accomplish the coverage objective. Elements to be flush mounted to extent feasible. Not to preclude possible future collocation. Must be situated as close to-ground as possible to reduce visual impact w/o compromising function.

5. Poles –

a. ONLY pole-mounted antenna shall be permitted in the ROW. All other telecom towers are prohibited, and NO NEW POLES are permitted that are not replacing an existing pole.

b. NO facility shall be placed on a pole that is less than 25 ft. in height

c. Utility poles. Max height of any ANTENNA shall not exceed 24 inches above the height of an existing utility pole, nor less than 18 ft. above any drivable road surface. All installs must comply w/ CA Public Utilities Commiss. General orders

d. Light Poles. Max of antenna = 6 ft. above height of existing light pole, no less than 18 ft. above any drivable road surface.

e. Replacement Poles. If replacing to accommodate facility, pole must match appearance of OG pole to extent feasible. If replacement pole exceeds height of original pole, antennas cannot extend above top of replacement pole for more than “X” feet, where “X” = 6 feet minus the difference in height b/t the old and new poles.

f. pole mounted equipment must not exceed 6 cubic ft. in dimension.

g. All poles must be designed to be minimum functional height/width required to support antenna install & meet FCC requirements. poles/ANTENNAS/similar structures no greater in diameter or cross sectional dimensions than necessary for proper function of Facility; must provide director proof of compliance.

h. If exception if granted to placement of new pole in ROW, new pole must be designed to resemble existing pole nearby, w/exception of existing poles that are scheduled to be removed and not replaced. New Poles that are not replacement poles MSUT BE AT LEAST 90 FEET AWAY FROM ANY EXISTING POLE TO EXTENT FEASIBLE

i. ALL cables run w/in interior of pole and/or must be fully camouflaged or hidden to extent feasible w/o jeopardizing physical integrity of pole.

6. Facility must be designed to occupy least space in ROW technically feasible.

7. must withstand high wind loads. Evaluation of load capacity must include impact of modification to existing

8. Each part of facility must not cause any physical or visual obstruction to pedestrian or vehicular traffic inconvenience to the public's use of the ROW, or safety hazards to pedestrians/drivers, AND must comply w/ 9661.14.

9. Cannot be located w/n any Portion of PROW interfering w/ access to any vital public health and safety facility.

10. IN no case shall ground mounted facility, above ground accessory equip, or walls, fences, landscaping, or other screening methods be less than 18 inches from curb.

11. ALL CABLES b/t pole and accessory equip. must be placed underground.

12. facility must be built in compliance w/ ADA.

13. Accessory Equip. - W/ exception of electric meter, all accessory equip to be underground.

a. unless CITY determines no room in PROW for underground or just not feasible underground, exception is required to place above ground.

b. if above ground is only feasible location and cannot be pole mounted, must be enclosed in structure, not higher than 5 ft. and a total footprint of 15 sq. ft. and fully screened/camouflaged. Required electrical meter cabinets must be screened/camouflaged. subdued colors & non reflective materials that blend w/ surrounding colors & m

17. NOISE - essentially the same as non-public right of way.

Is this requirement imposed on other uses?

19. MODIFICATIONS, essentially the same as non-public right of way.

Is this requirement imposed on other uses?

9661.8 Agreement For Facilities on City-Owned Property or Public Right Of Way.

Appears to be inconsistent with restrictions of 7901.1.

No approval for locating facility on City owned or public right of way is effective until App and CITY have executed written agreement establishing terms under which right shall be used or maintained. Said Agreement shall include but not limited to:

1. inspection & Maintenance requirements
2. indemnification of CITY
3. INSURANCE Requirements
4. Waiver of Monetary damages against CITY
5. Removal, restoration, and cleanup requirements
6. Requirement to pay possessory interest taxed, if any.

9661.10 WIRELESS TELECOMM COLLOCATION FACILITIES

Ambiguous whether a permit is necessary for a collocation.

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D. Notwithstanding any other provision of this division, a subsequent collocation on a WTCF will be permitted if:

F. EXCEPT AS OTHERWISE PROVIDED ABOVE, APPROVAL OF A NEW OR AMENDED FACILITY PERMIT IS REQ'D WHEN THE FACILITY IS MODIFIED OTHER THAN BY COLLOCATION in accord w/ this section, OR WHEN PROPOSED COLLOCATION:

1. INCREASES THE HEIGHT of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted WTCF unless specifically permitted under the conditions of approval applicable to such WTCFs; OR

2. ADDS any MICROWAVE DISH OR OTHER ANTENNA NOT EXPRESSLY PERMITTED TO BE INCLUDED IN A Collocation Facility by the conditions of approval.

9661.15 PERMIT EXPIRATION

Is this type of limitation imposed on any-other land use?

A. 10 years from the date of issuance, unless pursuant to other prov. of this Code it lapses sooner or is revoked;

9661.20 LOCATION RESTRICTIONS -

These provisions might make it impossible for carriers to serve certain areas of the City.

A. WTF&CFs cannot locate in the following w/o an-exception:

1. zoning districts other than BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts; however, can be in PROW arterial roadways w/in those other districts w/o exception;

2. PROW of collector of roadways as identified in general plan;

3. PROW of local streets as identified in the general plan if w/in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts;

4. PROW if mounted to new pole that's not replacing an existing pole, regardless of location; or

5. Bldg mounted or Roof mounted on bldg. owned in common by HOA, even if located in residential zone;

6. regardless of the above, can't locate w/in OS-DR or OS-R zoning districts, including PROW of arterial or collector roadways/in those districts, w/o an exception; however, app must also get approval under sections 9487 & 9821.5 of Code.

B. Regardless of Section 9661.19, exception can't be granted for location of WTF or WTCF in any of the following:

1. any location in residential district, except for PROW of arterial or collector roadways and those locations listed in section 9661.20(A)(5);

2. any location w/in 100 ft. from residential district, with exception of PROW art & collector roadways, or bldg. or roof-mounted facilities in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, or SH districts.

3. Any location that would significantly obstruct or diminish views in scenic corridors;

4. any location on or near a ridge such that a silhouette of facility would be seen against the sky; or

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5. planned development zones anywhere where zone or plan prohibits facilities.

C. if could qualify as both permissible location and one enumerated in this section, this section controls. If could qualify as either a location requiring an exception under Para A of this section or a location where no exception is allowed under Para B, B controls and no exception granted.

PART 12. NONCONFORMING WTFs
"9711. NONCONFORMING WTF & CFs

AT&T is concerned that this provision will limit the ability of carriers to provide the full range of available services in areas of the City served by sites affected by this section.

A. Nonconforming WTF&CFs are those that do not conform to Division 11 of part 2 of chapter 6 of Article IX of this Code.

B. 10 yrs from date of nonconformance, to bring facility in conformance w/ all requirements of this article; however, if owner wants to expand or modify, intensify use, or make other changes in a conditional use, owner must comply w/ all applicable provisions of Code at such time;

BB

Letter 1.

Commenter: Dan Revetto, Director AT&T External Affairs
Date: June 6, 2011

Responses

Response 1A:

The commenter states that AT&T objects to the adoption of the Draft IS/ND and approval of the proposed Ordinance until such time as the City adequately addresses AT&T's concerns. The commenter goes on to state that the Draft IS/ND fails to describe and analyze the reasonably foreseeable impacts of the proposed project. The commenter does not state how the IS/ND fails to describe and analyze the reasonably foreseeable impacts of the proposed project, and does not provide references to specific sections of the IS/ND or issues addressed or failed to be addressed in the IS/ND. The comment must therefore be addressed broadly.

The IS/ND has been prepared pursuant to the California Environmental Quality Act (CEQA) and its guidelines. The IS/ND describes and analyzes the reasonably foreseeable impacts of the Ordinance. The following environmental issue topics have been addressed adequately in the document:

- Land Use and Planning
- Biological Resources
- Air Quality
- Cultural Resources
- Geology and Soils
- Greenhouse Gases
- Hazards and Hazardous Materials
- Aesthetics
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation/Traffic
- Utilities and Service Systems
- Mandatory Findings of Significance

The project, the Wireless Telecommunications Facilities Ordinance, was shown in the IS/ND to result in "No impact" in all item categories of the above topics. The Ordinance is not a physical development project, but a zoning ordinance amendment. The IS/ND notes that as physical development project applications are submitted to the City for consideration (e.g., a permit for a wireless telecommunications facility), additional CEQA review would occur at that time, and the

project's site specific issues, including the particular location and type of construction and installation, would be assessed.

Responses 1B-1BB:

The comments pertain to policy items contained in the Wireless Telecommunications Facilities Ordinance document, which is Attachment 1 to the IS/ND. The commenter notes on several occasions, for example, that the Ordinance poses unnecessary burdens, delays, or expense on wireless telecommunications projects, or that the Ordinance is inconsistent with federal law. The Ordinance has been prepared in accordance with the provisions of the City of Agoura Hills Municipal Code, as well as in accordance with state and federal laws. The comments do not refer to the IS/ND and do not address the adequacy of the CEQA document, and so no further discussion is required herein.

ORDINANCE NO. 11-387

AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING A NEW DIVISION 11 ENTITLED “WIRELESS TELECOMMUNICATIONS FACILITIES” TO PART 2, CHAPTER 6 OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES, INCLUDING INSTALLATIONS IN THE PUBLIC RIGHT-OF-WAY, MAKING CONFORMING AMENDMENTS TO ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE, AND REPEALING ORDINANCE NO. 09-369U, AN INTERIM URGENCY ORDINANCE RELATING TO WIRELESS COMMUNICATION FACILITIES

A. Recitals.

(i) The purpose of this Ordinance is to amend the City’s Municipal Code to provide uniform and comprehensive standards and regulations, along with permit requirements, for the installation of wireless telecommunications facilities in the City, including installations on private property, public property and in the public right-of-way.

(ii) On October 14, 2009, the City Council adopted Ordinance No. 09-369U establishing a moratorium on wireless communication facilities in the City. On November 10, 2009, Ordinance No. 09-370U extended that moratorium through September 25, 2010. On August 25, 2010, Ordinance No. 10-378U further extended that moratorium, which is scheduled to expire on September 25, 2011.

(iii) On July 7, 2011, the Planning Commission of the City of Agoura Hills held a duly noticed public hearing to consider Ordinance 11-387, and received testimony from City staff and all interested parties regarding the proposed amendments. Following the close of the public hearing, the Planning Commission adopted Resolution No. 11-1034 recommending approval of Ordinance 11-387, and recommending adoption of the Initial Study/Negative Declaration prepared for the Ordinance pursuant to the California Environmental Quality Act.

(iv) On August 10, 2011, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the zoning code amendments contained herein as required by law, and received testimony from City staff and all interested parties regarding the proposed amendments.

(v) All legal prerequisites to the adoption of the Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review

A. Pursuant to the California Environmental Quality Act (“CEQA”), as amended, the CEQA Guidelines promulgated thereunder, and the City’s local CEQA Guidelines, City staff prepared an Initial Study of the potential environmental effects of this proposed Ordinance and the Municipal Code amendments contained herein (the “project”). On the basis of the Initial Study, City staff for the City of Agoura Hills, acting as Lead Agency, determined that there was no substantial evidence that the project could have a significant effect on the environment; as a result, City staff prepared a Negative Declaration for the project and provided public notice of the public comment period and of the intent to adopt the Negative Declaration.

B. The City Council has independently reviewed (1) the Negative Declaration and Initial Study (both of which are attached hereto as Exhibit “A” and incorporated by this reference) and (2) all comments received, both written and oral, regarding the Negative Declaration and Initial Study, and based upon the whole record before it finds that those documents were prepared in compliance with CEQA, the CEQA Guidelines and the City’s local CEQA Guidelines, that City staff has correctly concluded that there is no substantial evidence that the project will have a significant effect on the environment, and that the findings contained therein represent the independent judgment and analysis of the City Council. Based on these findings, the City Council hereby approves and adopts the Negative Declaration for this project.

C. The custodian of records for the Initial Study, Negative Declaration and all materials which constitute the record of proceedings upon which the City Council’s decision was based is the City Clerk of the City of Agoura Hills. Those documents are available for public review in the Office of the City Clerk located at 30001 Ladyface Court, Agoura Hills, California 91301.

SECTION 3. Ordinance No. 09-369U establishing a moratorium on wireless communication facilities and Ordinance Nos. 09-370U and 10-378U extending that moratorium are hereby repealed as of the effective date of this Ordinance.

SECTION 4. The “W” list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by replacing the “W” list in its entirety as follows:

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
W.		CS	CRS	CR	BP-OR	BP-M
1.	Watches, sale, repair	X	X		E, G, U	G
2.	Welding shop					J

3.	Wholesale distributor's service					J
4.	Wholesale store		X			X
5.	Wig sales and service	X	X			
6.	Wireless telecommunications collocation facility	BB	BB	BB	BB	BB
7.	Wireless telecommunications facility	BB	BB	BB	BB	BB
8.	Winery sales facility/tasting room	W	W			W

The City Council is currently considering adoption of Ordinance No. 11-388. On the date that Ordinance No. 11-388 becomes effective, all references in Division 11 of the Agoura Hills Municipal Code to the “Specific Plan,” or “SP” district shall be changed to “Planned Development” or “PD”; zoning districts “Commercial Neighborhood,” or “CN,” and “Commercial Shopping Center-Mixed Use,” or “CS-MU,” shall be added to the list of zoning districts in Sections 9661.5.A.2., 9661.5.A.2.a., 9661.20.A.1., 9661.20.A.3., and 9661.20.B.2.; and Items 7 and 8 of the “W” list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code shall be replaced with the following:

	USE, SERVICE OR FACILITY	COMMERCIAL					BUSINESS PARK	
W.		CS	CRS	CR	CN	CS-MU	BP-OR	BP-M
7.	Wireless telecommunications collocation facility	BB	BB	BB	BB	BB	BB	BB
8.	Wireless telecommunications facility	BB	BB	BB	BB	BB	BB	BB

SECTION 5. Item 19 in the “P” list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by deleting “a. Wireless Telecommunication Facilities” and “b. Other” and replacing Item 19 in its entirety as follows:

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
19.	Public utility and public service	K	K	K	K, U	K

SECTION 6. Paragraph BB of Section 9312.3. Special conditions, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is amended by replacing “BB” in its entirety as follows:

- BB. Permitted subject to issuance of either a minor conditional use permit or a conditional use permit as specified in Division 11 “Wireless Telecommunications Facilities” of this Part, beginning at section 9661 and subject to the required findings as stated in that Division.

SECTION 7. Division 11 “Wireless Telecommunications Facilities” is hereby added to Part 2, Chapter 6, Article IX of the Agoura Hills Municipal Code beginning at Section 9661 to read as follows:

“DIVISION 11. WIRELESS TELECOMMUNICATIONS FACILITIES

9661. Purpose.

The purpose and intent of this division is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This division provides standards necessary (1) for the preservation of land uses and the public right-of-way in the city, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, and (4) to encourage new and more efficient technology in the provision of wireless telecommunications facilities.

9661.1 Definitions.

“Accessory equipment” means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“Antenna” means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

“Building-Mounted” means mounted to the side of a building, to the façade of a building, or similar structure, but not to include the roof of any structure.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“Collocation” means the addition of wireless telecommunications facilities to an existing wireless telecommunications facility so that one site is shared amongst the same or different carrier.

“COW” means a “cell on wheels,” which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

“Facility(ies)” means both wireless telecommunications facilities and wireless telecommunications collocation facilities, unless the context specifically limits it to one or the other.

“Ground-Mounted” means mounted to a telecommunications tower.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“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 trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

“Public right-of-way” means any public street or public way now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the city.

“Reviewing Authority” means the director or the planning commission, as applicable, who has the authority to review and either grant or deny a permit required by this division prior to installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility.

“Roof-Mounted” means mounted directly on the roof of any building or structure.

“Telecommunications tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

“Utility Pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

“Wireless telecommunications collocation facility” means a wireless telecommunications facility specifically designed for subsequent collocation as a permitted use as set forth in section 9661.10.

“Wireless telecommunications facility” means any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term “wireless telecommunications facility” does not apply to the following:

(a) A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission’s Rules, or its successor regulation.

(b) Any antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or its successor regulation, including, but not limited to,

direct-to-home satellite dishes that are less than one meter (39.37”) in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.

(c) Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the Director.

(d) Government owned and operated telecommunications facilities.

(e) Emergency medical care provider-owned and operated telecommunications facilities.

(f) Mobile services providing public information coverage of news events of a temporary nature.

(g) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

9661.2 Applicability.

This division applies to all wireless telecommunications facilities and wireless telecommunications collocation facilities, as follows:

- A. All facilities for which applications were not approved prior to _____, shall be subject to and comply with all provisions of this division;
- B. All facilities for which applications were approved by the city prior to _____ shall not be required to obtain a new or amended permit until such time as a provision of this Code so requires. Any wireless telecommunication facility or wireless telecommunications collocation facility that was lawfully constructed prior to _____ that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of section 9711.
- C. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this division governing the operation and maintenance (section 9661.12), radio frequency emissions monitoring (section 9661.13), cessation of use and abandonment (section 9661.16), removal and restoration (section 9661.17) of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 9661.14); provided, however, that in the event a condition of approval conflicts with a

provision of this division, the condition of approval shall control until the permit is amended or revoked.

- D. Notwithstanding (B) above, no modification shall be made to any facility that was approved prior to _____, unless the permits required by this division have been obtained from the city.

9661.3 Wireless Telecommunications Facility Permit Requirements.

- A. *Permit Required.* No wireless telecommunications facility or wireless telecommunications collocation facility shall be located within the city on any property, including the public right-of-way, unless the permits required by this division have been obtained from the city. No modification to a wireless telecommunications facility or wireless telecommunications collocation facility shall be made unless the permits required by this division have been obtained from the city.
- B. *Type of Permit Required.* Either a minor conditional use permit or a conditional use permit is required, depending upon location and type of facility proposed, as set forth in sections 9661.5, 9661.6, and 9661.10. If a facility has been permitted pursuant to a minor conditional use permit or a conditional use permit, any modification to the facility shall require either an amended permit, or if the type of permit required has changed, a new permit of the type set forth in this division.
- C. A wireless telecommunications facility, wireless telecommunications collocation facility, and/or a telecommunications tower or other wireless telecommunications support structure, which is built on speculation and for which there is no wireless tenant is prohibited within the city.

9661.4 Application for Permit.

- A. *Purpose.* This section sets forth the application submittal requirements for all permits required by this division. The purpose of this section is, in part, to ensure that this division is implemented to the full extent permitted by the Telecommunications Act of 1996.
- B. *Supplemental Application.* In addition to the information required of an applicant for a minor conditional use permit or conditional use permit, each applicant requesting approval of the installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, regardless of location, shall fully and completely submit to the city a written supplemental application on a form prepared by the director.
- C. *Supplemental Application Contents.* The supplemental application form shall request the following information, in addition to all other information determined necessary by the director:
1. The name, address and telephone number of the owner and the operator of the proposed facility, if different from the applicant.

2. The type of facility.
3. If the applicant is an agent, a letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, a letter of authorization from the person or entity that will provide those services.
4. If the facility will be located on the property of someone other than the owner of the facility, written authorization by any and all property owners authorizing the placement of the facility on the property owner's property.
5. A full written description of the proposed facility, its purpose, and specifications, including the height and diameter of the facility, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site.
6. A detailed engineering plan of the proposed facility created by a qualified licensed engineer and in accordance with requirements set by the director, including a photograph and model name and number of each piece of equipment included.
7. A site plan containing the exact proposed location of the facility.
8. If the applicant requests an exception to the requirements of this division, the applicant shall provide all information and studies necessary for the city to evaluate that request.
9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations.
10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
11. For a facility that is not categorically excluded, the applicant shall also provide a technically detailed report certified by a qualified radio frequency engineer indicating the amount of radio frequency emissions expected from the proposed facility and associated accessory equipment, as well as the cumulative impacts of the other existing facilities at the site to the extent permitted by federal law, including co-located facilities, and stating that emissions from the proposed facility individually and combined with the cumulative emissions of on-site facilities will not exceed standards set by the Federal Communications Commission.

12. Documentation certifying that the applicant has obtained all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed in connection with the application.
13. A noise study prepared by a qualified acoustic engineer documenting the level of noise to be emitted by the proposed facility and its potential effects on surrounding uses.
14. A conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.
15. A description of the maintenance and monitoring program for the facility.
16. A written description identifying the geographic service area for the subject installation, accompanied by a master plan, including maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities. The master plan shall reflect all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.
17. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and aesthetically desirable.
18. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is 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.
19. An application fee, a deposit for a consultant's review as set forth in paragraph D of this section, and a deposit for review by the city's attorney, in an amount set by resolution by the City Council.
20. Any other information and/or studies determined necessary by the director may be required.

D. *Independent Expert.* The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility or wireless telecommunications collocation facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility or wireless telecommunications collocation facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;

2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

E. *Story Poles.* At the discretion of the director, the applicant may be required to erect temporary story poles to demonstrate the height and mass of a potential facility.

9661.5 Requirements for Facilities Not within the Public Right-of-Way.

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way.

A. Permit Required.

1. BP-M District.
 - a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be building-mounted or roof-mounted in the BP-M district, or mounted to an existing telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a minor conditional use permit.
 - b. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be mounted to a new telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a conditional use permit.
2. BP-OR, CRS, CS, CR, SP, U, and SH districts.
 - a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or

wireless telecommunications collocation facility in the BP-OR, CRS, CS, CR, SP, U, and SH districts, except for those locations listed in section 9661.20, shall require a conditional use permit.

3. All other districts, areas and locations.

- a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located in a location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way shall be designed and maintained so as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.

- a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area, and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.
- b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods.

- a. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
- b. Site location and development shall preserve the pre-existing character of the site as much as possible, and facilities shall be designed and located where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening to minimize the visual impact

and be compatible with existing architectural elements, building materials and other site characteristics.

- c. Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area.
4. Antennas. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
 5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be camouflaged, concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.
 - a. Each building-mounted facility shall be incorporated into the design elements of the building architecture.
 - i. The width and height of the facility shall be the minimum functionally necessary.
 - ii. Each facility shall not exceed more than eighteen (18) inches out from the building façade or other support structure, and no cable or antenna mounting brackets or any other associated equipment or wires shall be visible above, below, or to the side of the facility.
 - iii. The reviewing authority may consider a projection of more than eighteen (18) inches if the projection is architecturally integrated with the design of the building or structure or if it is otherwise designed to minimize its visibility.
 - iv. Any building-mounted facility that is within one hundred (100) feet of a residential district shall be located on the building or structure as far from the nearest residential use as is feasible.
 - b. Each roof-mounted facility shall be located and designed in an area of the roof where the visual impact is minimized and shall be no taller than necessary to meet the operator's service requirements.
 - i. In no case shall roof-mounted equipment on a flat roof exceed the top of the parapet or the top of the mansard measured from the

roofline, and on a slope roof shall not extend above the top of roofline.

- ii. Each roof-mounted facility shall also be screened from above if visible from higher elevations.
- iii. Any roof-mounted facility that is within one hundred (100) feet of a residential district shall be located on the roof of the building or structure as far from the nearest residential use as is feasible.

6. Ground-Mounted Facilities.

- a. Each ground-mounted facility shall be located in close proximity to existing above-ground utilities, such as electrical tower or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the city.
- b. Each ground-mounted facility shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet Federal Communications Commission requirements, and shall be no higher than the existing poles, structures or trees near the placement of the proposed ground-mounted facility location, unless facilities are being added to an existing ground-mounted facility, pole or similar structure and are adequately camouflaged, concealed or screened in accordance with the standards in this division. Even if existing poles, structures or trees are higher, no new ground-mounted facility shall exceed sixty (60) feet. If facilities are being added to an existing ground-mounted facility, pole or similar structure, including a pole or similar structure that serves another purpose (e.g., a light pole), the resulting ground-mounted facility may exceed sixty (60) feet, but the maximum height of any antenna shall not exceed six (6) feet above the existing height of the pole or similar structure.
- c. All installations shall be properly engineered to withstand high wind loads; an evaluation of high wind load capacity shall include the impact of modification of an existing facility.
- d. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and/or shall be fully camouflaged or hidden.
- e. Each ground-mounted installation shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

- f. Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this subsection.
 - g. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.
7. Accessory Equipment. All accessory equipment associated with the operation of any wireless telecommunications facility or wireless telecommunications collocation facility shall be located and screened in a manner that is designed to minimize its visibility to the greatest extent possible, including utilizing the following screening methods for the type of installation:
- a. Accessory equipment for building-mounted or roof-mounted facilities may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for each roof-mounted facility shall be of a quality and design that is architecturally integrated with the design of the building or structure.
 - b. Accessory equipment for ground-mounted facilities shall be visually screened by locating the equipment within a nearby building or in an underground vault, with the exception of required electrical panels. If a building is not located near the facility or placement of the equipment in an existing building is not technically feasible, accessory equipment shall be located in an enclosed structure, and shall comply with the development and design standards of the zoning district in which the accessory equipment is located. The enclosed structure shall be architecturally treated and/or adequately screened from view by landscape plantings, walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.
8. Landscaping. Where appropriate, each facility 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. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.

9. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
10. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.
11. Noise.
 - a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.
 - c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA at the facility's property line if the facility is located in a business, commercial, manufacturing, utility or school zone or a specific plan zone that permits those uses, provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
 - d. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the facility's property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this Code.
12. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

13. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.
2. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within seven (7) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and Federal Communications Commission certification.
 - c. Name, address and telephone number of the property owner if different than the permittee.
3. Upon any transfer or assignment of the permit, the director may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing permit and all of its conditions of approval including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Telecommunications Commission and the California Public Utilities Commission. If the director determines that the proposed operation is not consistent with the existing permit, the director shall notify the permittee who shall either revise the application or apply for modification of the permit pursuant to the requirements of the Agoura Hills Municipal Code.
4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the city reasonable access to, and maintenance of, all

utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.

5. At all times, all required notices and signs shall be posted on the site as required by the Federal Communications Commission and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the Federal Communications Commission and antenna height standards adopted by the Federal Aviation Administration, and shall timely submit all monitoring reports required pursuant to section 9661.13 of the Agoura Hills Municipal Code.
7. If the director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed Federal Communications Commission standards, the director may require post-installation testing, at permittee's expense, or the director may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer at other than the regularly required intervals specified in Section 9661.13 of the Agoura Hills Municipal Code, certifying that the facility is in compliance with such FCC standards.
8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the City of Agoura Hills Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.)
9. If a nearby property owner registers a noise complaint and such complaint is verified as valid by the city, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose that condition on the project after notice and a public hearing. (A condition incorporating the applicable noise limitations of this Chapter shall also be included in the conditions of approval.)
10. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims,

actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

11. "Permittee" shall include the applicant and all successors in interest to this permit.
12. A condition setting forth the permit expiration date in accordance with Section 9661.15 shall be included in the conditions of approval.

If a wireless telecommunications collocation facility is being approved, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

9661.6 Requirements for Facilities within the Public Right-of-Way

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located within the public right-of-way. For purposes of this section, "located within the public right-of-way" shall include any facility which in whole or in part, itself or as part of another structure, rests upon, in or over the public right-of-way.

A. Permit Required.

1. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way of arterial roadways, as identified in the general plan, except any locations listed in section 9661.20, shall require a conditional use permit.
2. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way and is in any location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.
3. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, shall be eligible for a

permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless collocation telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.
 - a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties all in a manner that achieves compatibility with the community.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
4. Antenna Mounts. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
5. Poles.
 - a. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.
 - b. No facility shall be located on a pole that is less than twenty five (25) feet in height.

- c. Utility poles. The maximum height of any antenna shall not exceed twenty four (24) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than eighteen (18) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.
 - d. Light poles. The maximum height of any antenna shall not exceed six (6) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than eighteen (18) feet above any drivable road surface.
 - e. Replacement poles. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible. If the replacement pole exceeds the height of the existing pole, the antenna(s) shall not extend above the top of the replacement pole for more than "X" feet, where "X" is calculated by subtracting the difference in height between the original and replacement poles from six feet.
 - f. Pole mounted equipment shall not exceed six (6) cubic feet in dimension.
 - g. All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet Federal Communications Commission requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this paragraph.
 - h. If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole, to the extent feasible, to prevent pole clustering in the public right-of-way.
 - i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the pole.
6. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. Each facility shall be properly engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
8. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 9661.14.
9. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
10. In no case shall any ground-mounted facility, above-ground accessory equipment, or walls, fences, landscaping or other screening methods be less than eighteen (18) inches from the front of curb.
11. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground.
12. Each facility shall be built in compliance with the Americans with Disabilities Act (ADA).
13. Accessory Equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground.
 - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground.
 - b. When above-ground is the only feasible location for a particular type of accessory equipment and cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be adequately screened and/or camouflaged.
14. Landscaping. Where appropriate, each facility 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. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.

15. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
16. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.
17. Noise.
 - a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.
 - c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in a business, commercial, manufacturing, utility or school zone or a specific plan zone that permits those uses; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
 - d. Any equipment that may emit noise that would be audible from beyond three (3) feet from the source of the noise shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this code.
18. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.
19. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment

shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with all applicable provisions of this division, all facilities in the public right-of-way shall be subject to the conditions of approval set forth in subsection 9661.5(C), the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the city engineer for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
2. The permittee shall not transfer the permit to any person prior to completion of construction of the facility covered by the permit.
3. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.
4. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
5. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and

systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer, the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

6. Prior to issuance of a building permit, the applicant shall obtain the director's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten (10) foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size and type of tree, etc.), a radius greater than ten (10) feet may be required by the director.
7. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.
8. Indemnification. To the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend,

indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any bodily or personal injury, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

9. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within thirty (30) days of such service being offered and reasonably restore the area to its prior condition.
10. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Code, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.
11. Prior to the issuance of any encroachment or building permits, permittee shall enter into a right-of-way agreement with the city in accordance with Agoura Hills Municipal Code Section 9661.8.

If a wireless telecommunications collocation facility is being approved, the phrase “wireless telecommunications collocation facility” shall be substituted in the above conditions wherever the phrase “wireless telecommunications facility” appears.

9661.7 Findings.

A. In addition to findings necessary to approve a conditional use permit or minor conditional use permit, as applicable, no permit shall be granted for a wireless telecommunications facility or a wireless telecommunications collocation facility unless all of the following findings are made by the reviewing authority:

1. The proposed facility has been designed and located in compliance with all applicable provisions of this division.
2. The proposed facility has been designed and located to achieve compatibility with the community.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this division.

B. In addition to the findings in (A) above, approval of a permit for a wireless telecommunications facility or a wireless telecommunications collocation facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:

1. The applicant has provided substantial written evidence supporting the applicant’s claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way and existing subterranean infrastructure and will not interfere with the city’s plans for modification of such location and infrastructure.

9661.8 Agreement for Facilities on City-Owned Property or Public Right-of-way.

A. No approval granted under this division for locating facilities on city-owned property or in the public right-of-way shall be effective until the applicant and the city have executed a written agreement establishing the particular terms and provisions under which the right to occupy city-owned property or the public right-of-way, or both, shall be used or maintained. Such agreement shall include, but not be limited to, the following:

1. Inspection and maintenance requirements.
2. Indemnification of the city.
3. Insurance requirements.
4. Waiver of monetary damages against the city.
5. Removal, restoration and clean-up requirements.
6. Requirement to pay possessory interest taxes, if any.

9661.9 Nonexclusive grant.

No approval granted under this division shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

9661.10 Wireless Telecommunications Collocation Facilities

- A. *Purpose.* The purpose of this section is to comply with the requirements of California Government Code Section 65850.6. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.
- B. In addition to any other permit required by this Code, a wireless telecommunications collocation facility shall be subject to either a minor conditional use permit or a conditional use permit as provided for in this division.
- C. All requirements, regulations and standards set forth in this division for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:
 1. The applicant for a wireless telecommunications collocation facility permit shall answer each question or request on the supplemental application provided for in section 9661.4 of this division so as to describe or depict:
 - a. the wireless telecommunications collocation facility as it will be initially built, and
 - b. all collocations at full build-out, including, but not limited to, all antennas, antenna support structures and accessory equipment.

2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.
 3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.
- D. Notwithstanding any other provision of this division, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use if:
1. The wireless telecommunications collocation facility:
 - a. was approved after January 1, 2007 by discretionary permit;
 - b. was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and
 - c. otherwise complies with the requirements of Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this division and the conditions of approval in the wireless telecommunications collocation facility permit; and
 - d. provided, however, only those collocations that were specifically considered when the relevant environmental document was prepared are a permitted use.
 2. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permit(s), as required pursuant to this Code.
- E. Although subsequent collocation under the conditions specified in paragraph (D) above is a permitted use, the owner of the facilities that will be collocated may voluntarily submit a wireless telecommunications facility application for the proposed collocation for the director's determination whether the collocation is a permitted use that meets the requirements of this division. Any collocation facility that does not meet the requirements of this division and is installed without first obtaining a wireless telecommunications permit is subject to immediate abatement and all other remedies available to the city pursuant to this Code.
- F. Except as otherwise provided above, approval of a new or amended facility permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:

1. Increases the height of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or
2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

9661.11 Emergency Deployment.

A COW shall be permitted in all zoning districts for the duration of an emergency declared by the city or at the discretion of the director.

9661.12 Operation and Maintenance Standards.

All wireless telecommunications facilities and wireless telecommunications collocation facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours (i) after discovery of the need by the permittee, owner, operator or any designated maintenance agent or (ii) after permittee, owner, operator or any designated maintenance agent receives notification from a resident or the director.

- A. Each permittee of a wireless telecommunications facility or wireless telecommunications collocation facilities shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within seven (7) days of any change.
- B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored or damaged artificial foliage or other camouflage;
 6. Graffiti, bills, stickers, advertisements, litter and debris;
 7. Broken and misshapen structural parts; and

8. Any damage from any cause.
- C. Graffiti shall be removed from a facility as soon as practicable, and in no instance more than twenty-four (24) hours from the time of notification by the city.
- D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.
- E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- F. Each facility shall be operated and maintained to comply at all times with the noise standards of this Code and the facility's conditions of approval, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the director. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
- G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
- H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

9661.13 RF Emissions and Other Monitoring Requirements.

The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every two years from the date the facility began operations, a technically sufficient report ("monitoring report") that demonstrates the following:

- A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;
- B. The facility is in compliance with all provisions of this section and its conditions of approval.
- C. The bandwidth of the facility has not been changed since the original application or last report, as applicable, and if it has, a full written description of that change.

9661.14 No Dangerous Condition or Obstructions Allowed

No person shall install, use or maintain any wireless telecommunications facility or wireless telecommunications collocation facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

9661.15 Permit Expiration.

- A. A permit for any wireless telecommunications facility or wireless telecommunication collocation facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of ten (10) years no sooner than six (6) months prior to expiration of the permit; provided, however, if a request to modify an existing permit for a facility is submitted during the last two (2) years of a ten (10) year permit, the permittee may request an extension at that time.
- C. If feasible at the time of permit expiration, the permittee shall (1) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Agoura Hills Municipal Code.
- D. If a permit has not expired at the time application is made for an extension, the director may administratively extend the term of the permit for subsequent ten (10) year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of this Code that are in effect at the time the permit extension is granted.
 1. At the director's discretion, additional studies and information may be required of the applicant.
 2. If the director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of this Code that are then in effect at the time of permit expiration, the director shall refer the extension request to the appropriate reviewing authority.
 3. The reviewing authority and public hearing procedures for such extension requests shall be the same as if a new permit was requested. After notice and a

public hearing, the reviewing authority may approve, conditionally approve or deny the extension.

- E. The request for an extension shall be decided by the planning commission if the permit expired before the application is made for an extension or if the director refers the matter to the planning commission. After notice and a public hearing, the planning commission may approve, conditionally approve or deny the extension.

9661.16 Cessation of Use or Abandonment

- A. A wireless telecommunications facility or wireless telecommunications collocation facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.
- C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
 - 1. Prosecution;
 - 2. Revocation or modification of the permit;
 - 3. Calling of any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this Code.

9661.17 Removal and Restoration – Permit Expiration, Revocation or Abandonment

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility or wireless telecommunications collocation facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city. If the facility is located on private property,

the private property owner shall also be independently responsible for the expense of timely removal and restoration.

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within thirty (30) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code, and be grounds for:

1. Prosecution;
2. Calling of any bond or other assurance required by this division or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
4. Any other remedies permitted under this Code.

C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility or wireless telecommunications collocation facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by City.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

9661.18 Appeals.

A. Any aggrieved person may appeal a decision of the director made pursuant to this division to the planning commission.

- B. Any aggrieved person may appeal a decision of the planning commission made pursuant to this division to the city council.

9661.19 Exceptions.

- A. Exceptions pertaining to any provision of this division, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority at a noticed public hearing if the reviewing authority makes the finding that (i) denial of the facility as proposed would violate state and/or federal law, or (ii) a provision of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit or wireless telecommunications facility collocation permit.
- B. Notwithstanding any other provision of this division, a conditional use permit shall be required for a facility when an exception is requested.
- C. The applicant shall have the burden of proving that denial of the facility as proposed would violate state and/or federal law, or the provisions of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law, using the evidentiary standards required by that law at issue. The city shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

9661.20 Location Restrictions.

- A. *Locations Requiring an Exception.* Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not locate in any of the following districts, areas or locations without an exception:
 - 1. Zoning districts other than BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts; provided however, facilities may be located in the public right-of-way of arterial roadways within those other districts without an exception;
 - 2. Public right-of-way of collector roadways as identified in the general plan;
 - 3. Public right-of-way of local streets as identified in the general plan if within the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts;
 - 4. Public right-of-way if mounted to a new pole that is not replacing an existing pole, regardless of location;
 - 5. Building-mounted or roof-mounted on a building owned in common by a homeowners' association, even if located in a residential zone;

6. A ground mounted facility that is not in the right-of-way but is within one hundred (100) feet of a residential district in the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts; or
 7. Notwithstanding any of the above, no facility shall locate within OS-DR or OS-R zoning districts, including the public right-of-way of arterial or collector roadways within those districts, without an exception; provided, however, applicant must also obtain approval, if required by this Code, pursuant to sections 9487 and 9821.5.
- B. *No Exception Allowed.* Notwithstanding the provisions of section 9661.19, in no case shall an exception be granted for the location of a wireless telecommunications facility or wireless telecommunications collocation facility in any of the following districts, areas or locations:
1. Any location within a residential district, with the exception of the public right-of-way of arterial or collector roadways and those locations set forth in section 9661.20(A)(5);
 2. Any public right-of-way location within one hundred (100) feet from a residential district, with the exception of the public right-of-way of arterial or collector roadways;
 3. Any location that would significantly obstruct or diminish views in scenic corridors;
 4. Any location on or near a ridgeline such that the facility would appear silhouetted against the sky; or
 5. Specific Plan zones in any location where the zone or specific plan prohibits such facilities.
- C. If a district, area or location could qualify as both a permissible location and a location enumerated in this section, it shall be deemed a location covered by this section and the provisions of this section shall control. If a district, area or location could qualify as either a location requiring an exception pursuant to paragraph (A) of this section or a location in which no exception is allowed pursuant to paragraph (B) of this section, it shall be deemed a location covered by paragraph (B) and no exception shall be granted.

9661.21 Effect on Other Ordinances.

Compliance with the provisions of this division shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this division shall control.

9661.22 Effect of State or Federal Law.

- A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities or wireless telecommunication collocation facilities, the permits required by this division for those facilities shall be deemed to be ministerial permits. Such a determination by the city attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a minor conditional use permit or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, and all provisions of this division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.
- B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record."

SECTION 8. Part 12 Nonconforming Wireless Telecommunications Facilities is hereby added to Chapter 7, Article IX of the Agoura Hills Municipal Code to read as follows:

PART 12. NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES

"9711. Nonconforming Wireless Telecommunications Facilities and Wireless Telecommunications Collocation Facilities

- A. Nonconforming wireless telecommunications facilities and/or nonconforming wireless telecommunications collocation facilities are those facilities that do not conform to division 11 of part 2 of chapter 6 of article IX of this Code.
- B. Nonconforming wireless telecommunications facilities and wireless telecommunications collocation facilities shall, within ten (10) years from the date such facility becomes nonconforming, bring the facility into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time.
- C. When a nonconforming wireless telecommunications facility or wireless telecommunications collocation facility is abandoned or vacated for a continuous period of ninety (90) days or more days, such facility shall conform to the regulations of the district in which the property is located or shall be removed in accordance with section 9661.17 of this Code if it cannot be made to conform.

- D. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.”

SECTION 9. Section 9804.3 of Part 1, Division 4, Article IX of the Agoura Hills Municipal Code is hereby amended in its entirety as follows:

“9804.3 Zoning administrator public hearings.

- A. The following matters shall be considered by the director after a public hearing:
1. Minor modifications; and
 2. Minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.
 3. Amendments to minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.
- B. The director shall make the same findings required for a conditional use permit before approving or amending a minor conditional use permit. The procedures set forth in division 3 of part 3 of chapter 6 of this article applicable to conditional use permits shall apply to minor conditional use permits, except that where the planning commission is authorized to perform certain acts, the provision shall instead be read to authorize the director to perform those acts, and where the city council is authorized to perform certain acts, the provision shall be read to authorize the planning commission to perform those acts; provided, however, that any appeal of the director’s decision decided by the planning commission may be appealed to the city council within the prescribed fifteen-day period. Furthermore, any hearing on a proposed revocation shall be before the planning commission and appealable to the city council.”

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall go into effect on the 31st day after its passage.

SECTION 12. Certification. The city clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2011, by the following vote to wit:

Harry Schwarz
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele
City Attorney