



REPORT TO CITY COUNCIL

DATE: MAY 22, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: DAVE WARD, COMMUNITY DEVELOPMENT DIRECTOR 

SUBJECT: ADOPTION OF URGENCY ORDINANCE NO. 19-443U AND INTRODUCTION OF A NON-URGENCY ORDINANCE NO. 19-443 TO AMEND MUNICIPAL CODE ARTICLE VII REGARDING SMALL WIRELESS FACILITIES AND MAKING FINDINGS OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPTION OF RESOLUTION NO. 19-1895 TO ESTABLISH A CITYWIDE POLICY FOR PERMITTING REQUIREMENTS, PROCEDURES, AND DEVELOPMENT STANDARDS FOR SMALL WIRELESS FACILITIES AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-01624-2019) (CITY OF AGOURA HILLS, APPLICANT)

On September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”), which establishes a new category of “small wireless facility.” The Report and Order, in an effort to streamline the deployment of small wireless facilities and related infrastructure purports to give wireless service providers the right to utilize the public right-of-way and to attach small wireless facilities to public infrastructure. The Report and Order substantially restricts local governments’ ability to regulate such facilities in public rights-of-way. The Report and Order requires that fees charged for small wireless facilities be reasonable and objective, sets timeframes (referred to as “shot clocks”) for reviewing and approving applications for new and additional small wireless facilities, and requires that aesthetic standards be reasonable and published in advance. The Report and Order took effect on January 14, 2019. The provision requiring published aesthetic standards took effect on April 15, 2019.

The reason for both the Urgency Ordinance and the Non-urgency Ordinance is that the Urgency Ordinance will permit the policy provisions to take effect and control over other provisions of the Municipal Code immediately. The Non-urgency Ordinance will end up superseding the Urgency Ordinance so as to eliminate reliance on urgency findings as the underlying foundation and basis for adoption and enforcement of the City’s standards. Other neighboring cities, including Calabasas, Moorpark, Thousand Oaks, and Westlake, have also recently adopted ordinances in response to the Report and Order.

The Urgency Ordinance and Non-urgency Ordinance create a new Chapter 7 in Article VII of the Municipal Code (Streets) to establish the small wireless facility category and

authority of the new citywide policy (Attachments 1 and 2). The Resolution contains the new "City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities" which addresses small wireless facility application requirements, required permit analysis and technical studies, findings for approval or denial of permit, design standards specific to both public rights-of-way and outside of public rights-of-way private property locations, and fees. The Report and Order stipulates that small wireless facility applications be processed and approved ministerially. While the Report and Order sets limitations on local agency authority, where reasonable and not prohibitive of wireless deployment, City staff has incorporated specific provisions from the City's existing wireless ordinance (Division 11 of Chapter 6 in Article IX Zoning) specific to locational criteria and development standards into the new citywide policy for small wireless facilities to ensure these devices and equipment will meet Agoura Hills community expectations. Detailed provisions of the policy are contained in Attachment 3.

Staff is requesting the City Council find that the adoption of the Ordinance is an urgency measure necessary for the immediate preservation of the public's health, safety and welfare, based on the following findings included in the Urgency Ordinance:

- Government Code Section 36937, subdivision (b) empowers the City Council to adopt an ordinance that takes effect immediately for the immediate preservation of the public peace, health or safety, with a declaration of the facts constituting the urgency,
- Due to the FCC action, City regulations on third-party use of its public rights-of-way or private property for telecommunication antennas may be invalidated which results in an absence of standards designed to protect the public, and
- Necessity exists to supersede current regulations of the City that conflict with the Report and Order, and to establish consistent regulations governing deployment of small wireless facilities in order to more fully protect the public health, safety, and welfare.

The Urgency Ordinance would take effect immediately, if passed and adopted by at least four-fifths (4/5) vote of the City Council, pursuant to Government Code Section 36937(b), and the Resolution would be effective immediately if adopted by majority vote of the City Council. The Non-urgency Ordinance would be effective after second reading by the City Council on a future hearing date.

Pursuant to the California Environmental Quality Act ("CEQA"), and the City's local CEQA Guidelines, staff has determined that adoption of the Urgency and Non-urgency Ordinances and Resolution ("the project") are exempt from review under the CEQA Regulation 15061(b)(3) covering activities with no possibility of having a significant effect on the environment; and pursuant to CEQA Regulation 15301 is categorically exempt for minor alternations of existing governmental and/or utility-owned structures.

Adoption of the Urgency Ordinance, Non-urgency Ordinance and Resolution will have minimal City fiscal impact. The City's current fee schedule, which included a fee study to justify the staff hours to process wireless permit applications, would likely remain adequate for small cell wireless permits, but this requires further study and confirmation.

In particular, the FCC's default fee level for recurring fee of \$270 is likely too low. Staff will therefore study this issue as well and return to the City Council with a fee proposal at a date in the near future.

RECOMMENDATION

Staff respectfully recommends the City Council:

- 1) Read by title only and adopt Urgency Ordinance No. 19-443U, amending Article VII of the Agoura Hills Municipal Code regarding the same, declaring the urgency and immediate effectiveness thereof, and making a finding of exemption under the California Environmental Quality Act;
- 2) Introduce Non-urgency Ordinance No. 19-443 to amend Municipal Code Article VII to establish Chapter 7, small wireless facilities, and authority of the citywide policy and making a finding of exemption under the California Environmental Quality Act; and
- 3) Adopt Resolution No. 19-1895 establishing the citywide policy for the requirements, procedures and development standards for small cell wireless facilities; and making a finding of exemption under the California Environmental Quality Act.

Attachments:

1. Urgency Ordinance No. 19-443U
2. Ordinance No. 19-443
3. Policy Resolution No. 19-1895

ATTACHMENT 1
URGENCY ORDINANCE

ORDINANCE NO. 19-443U

AN URGENCY ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, REGARDING SMALL WIRELESS FACILITIES, ADDING A NEW CHAPTER 7 TO ARTICLE VII OF THE AGOURA HILLS MUNICIPAL CODE REGARDING THE SAME, AND DECLARING THE URGENCY AND IMMEDIATE EFFECTIVENESS THEREOF PURSUANT TO GOVERNMENT CODE SECTIONS 36934 AND 36937

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in public rights-of-way, and the Report and Order went into effect on January 14, 2019; and

WHEREAS, the Report and Order purports to give providers of wireless services rights to utilize public rights-of-way and to attach so-called “small wireless facilities” to public infrastructure, including infrastructure of the City of Agoura Hills, subject to payment of “presumed reasonable”, non-recurring and recurring fees, and the ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order; and

WHEREAS, notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective”, i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; are (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements); and

WHEREAS, local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers; and

WHEREAS, it is the intent of the City Council in adopting this Ordinance to supersede regulations of the City that conflict with the Report and Order, and to establish consistent regulations governing deployment of small wireless facilities in order to more fully protect the public health, safety, and welfare, and the City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to re-enact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of the Report and Order in the event the Report and Order is invalidated, modified, or limited in any way.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF AGOURA HILLS ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals are true and correct.

Section 2. A new Chapter 7 entitled "Small Wireless Facilities" is hereby added to Article VII ("Streets") of the Agoura Hills Municipal Code to read as follows:

"Chapter 7 – SMALL WIRELESS FACILITIES

7701. – Small Wireless Facilities

Notwithstanding any other provision of the Agoura Hills Municipal Code to the contrary, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, shall be subject only to and must comply with the "Citywide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities" adopted by City Council resolution. No person shall construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove, or otherwise deploy any small wireless facility in violation of such policy."

Section 3. CEQA. The City of Agoura Hills has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. In addition, the City of Agoura Hills has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

Section 4. Future Modifications. The City Council finds and declares that it is adopting this Ordinance in order to more fully protect and preserve the public health and safety with respect to City rights-of-way in light of the adoption of the Report and Order. Notice is hereby given to any and all wireless providers obtaining a permit pursuant to the Agoura Hills Municipal Code as amended herein, that the City expressly reserves any and all rights it possessed prior to the adoption of the Report and Order concerning its authority to regulate its public rights-of-way. In the event the Report and Order is invalidated, modified, or limited in any way, the City Council reserves the right, subject to reasonable notice and due process, to modify the terms and conditions applicable to any permit issued hereunder including, but not limited to, the term, fees charged, and scope of any future wireless deployments within the City's rights-of-way.

Section 5. Urgency. City Council finds that, as a result of the regulations adopted by the Federal Communications Commission effective as of January 14, 2019, as more fully described in the recitals of this Ordinance, some City regulations governing third party use of its public rights-of-way or private property for telecommunication antennas may be invalidated which will result in an absence of standards designed to

protect the public. Therefore, unless this Ordinance is effective and its regulations are immediately put in place, the public health, safety and welfare will be at risk. Therefore the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and that it take effect immediately upon adoption pursuant to Government Code Section 36934, and its urgency is hereby declared.

Section 6. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

Section 7. Effective Date. Based upon the findings contained in Section 5 of this Ordinance, this Ordinance shall take effect immediately upon adoption pursuant to Government Code Sections 36937 (b) and 36934.

Section 8. Publication and Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED, this 22nd day of May, 2019, by the following vote to wit:

- AYES: ()
- NOES: ()
- ABSENT: ()
- ABSTAIN: ()

Linda L. Northrup, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF AGOURA HILLS)

I, Kimberly M. Rodrigues, City Clerk of the City of Agoura Hills, California, do hereby certify that the foregoing is a full, true, and correct copy of **Ordinance No. 19-443U** approved and adopted by the City Council of the City of Agoura Hills at a Regular City Council Meeting thereof held on the 22nd day of May, 2019, and that said Ordinance was published or posted pursuant to law.

Kimberly M. Rodrigues, MPPA, MMC
City Clerk

ATTACHMENT 2
NON-URGENCY ORDINANCE

ORDINANCE NO. 19-443

**AN ORDINANCE OF THE CITY OF AGOURA HILLS,
CALIFORNIA, REGARDING SMALL WIRELESS FACILITIES
AND ADDING A NEW CHAPTER 7 TO ARTICLE VII OF THE
AGOURA HILLS MUNICIPAL CODE REGARDING THE
SAME**

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in public rights-of-way, and the Report and Order went into effect on January 14, 2019; and

WHEREAS, the Report and Order purports to give providers of wireless services rights to utilize public rights-of-way and to attach so-called “small wireless facilities” to public infrastructure, including infrastructure of the City of Agoura Hills, subject to payment of “presumed reasonable”, non-recurring and recurring fees, and the ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order; and

WHEREAS, notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective”, i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; are (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements); and

WHEREAS, local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers; and

WHEREAS, it is the intent of the City Council in adopting this Ordinance to supersede regulations of the City that conflict with the Report and Order, and to establish consistent regulations governing deployment of small wireless facilities in order to more fully protect the public health, safety, and welfare, and the City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to re-enact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of the Report and Order in the event the Report and Order is invalidated, modified, or limited in any way;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF AGOURA HILLS ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals are true.

Section 2. A new Chapter 7 entitled "Small Wireless Facilities" is hereby added to Article VII ("Streets") of the Agoura Hills Municipal Code to read as follows:

"Chapter 7 – SMALL WIRELESS FACILITIES

7701. – Small Wireless Facilities

Notwithstanding any other provision of the Agoura Hills Municipal Code to the contrary, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(f), as may be amended or superseded, shall be subject only to and must comply with the "Citywide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities" adopted by City Council resolution. No person shall construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove, or otherwise deploy any small wireless facility in violation of such policy."

Section 3. CEQA. The City of Agoura Hills has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. In addition, the City of Agoura Hills has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

Section 4. Future Modifications. The City Council finds and declares that it is adopting this Ordinance in order to more fully protect and preserve the public health and safety with respect to City rights-of-way in light of the adoption of the Report and Order. Notice is hereby given to any and all wireless providers obtaining a permit pursuant to the Agoura Hills Municipal Code as amended herein, that the City expressly reserves any and all rights it possessed prior to the adoption of the Report and Order concerning its authority to regulate its public rights-of-way. In the event the Report and Order is invalidated, modified, or limited in any way, the City Council reserves the right, subject to reasonable notice and due process, to modify the terms and conditions applicable to any permit issued hereunder including, but not limited to, the term, fees charged, and scope of any future wireless deployments within the City's rights-of-way.

Section 5. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have

passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

Section 6. Publication and Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED, this day of , 2019, by the following vote to wit:

- AYES: ()
- NOES: ()
- ABSENT: ()
- ABSTAIN: ()

Linda L. Northrup, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF AGOURA HILLS)

I, Kimberly M. Rodrigues, City Clerk of the City of Agoura Hills, California, do hereby certify that the foregoing is a full, true, and correct copy of **Ordinance No. 19-443** approved and adopted by the City Council of the City of Agoura Hills at a Regular City Council Meeting thereof held on the day of , 2019, and that said Ordinance was published or posted pursuant to law.

Kimberly M. Rodrigues, MPPA, MMC
City Clerk

ATTACHMENT 3
POLICY RESOLUTION

RESOLUTION NO. 19-1895

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADOPTING A CITY WIDE POLICY REGARDING PERMITTING REQUIREMENTS AND DEVELOPMENT STANDARDS FOR SMALL WIRELESS FACILITIES

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in public rights-of-way; and

WHEREAS, the Report and Order purports to give providers of wireless services rights to utilize public rights-of-way and to attach so-called “small wireless facilities” to public infrastructure, including infrastructure of the City of Agoura Hills, subject to payment of “presumed reasonable”, non-recurring and recurring fees, and the ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order; and

WHEREAS, notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable,” i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective,” i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; and (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service,” (e.g., overly restrictive spacing requirements); and

WHEREAS, local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers, and pursuant to this retained authority, the City Council has amended the Agoura Hills Municipal Code to require all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.60002(l), as may be amended or superseded, to comply with the requirements of a policy adopted by resolution of the City Council entitled “City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities”;

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

Section 1. Findings. The City Council finds each of the facts in the preceding recitals to be true.

Section 2. City Wide Policy Adopted. The City Council of Agoura Hills hereby adopts the "City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities" set forth in Exhibit A to this Resolution, which is hereby incorporated as though set forth in full.

Section 3. CEQA. The City of Agoura Hills has determined that the adoption of this Resolution is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. In addition, the City of Agoura Hills has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

Section 4. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

Section 5. Certification. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this day of 2019, by the following vote to wit:

AYES: ()
NOES: ()
ABSTAIN: ()
ABSENT: ()

Linda L. Northrup, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

EXHIBIT A

CITY OF AGOURA HILLS CITY WIDE POLICY REGARDING PERMITTING REQUIREMENTS AND DEVELOPMENT STANDARDS FOR SMALL WIRELESS FACILITIES

SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) On September 27, 2018, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Cell Order* significantly curtail local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. Numerous legal challenges to the *Small Cell Order* have been raised but its regulations will become effective while such challenges are pending. Although the provisions may well be invalidated by future action, the City recognizes the practical reality that failure to comply with the *Small Cell Order* while it remains in effect will likely result in greater harm to the City's interests than if the City ignored the FCC's ruling. Accordingly, the City Council adopts this Policy ("Policy") as a means to accomplish such compliance that can be quickly amended or repealed in the future without the need to amend the City's municipal code.
- (b) The City of Agoura Hills intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits from advanced wireless services with local values, which include without limitation the aesthetic character of the City. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

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- (c) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

SECTION 1.2. DEFINITIONS

(a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and if not defined therein, then they will have the meanings assigned to them in Section 9661.1 of the Agoura Hills Municipal Code as may be amended or superseded, and if not defined therein either, then they will have their ordinary meaning. If any definition assigned to any phrase, term or word in Section 1.2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

(b) **Defined Terms.**

- (1) **“Accessory equipment”** means the same as “antenna equipment” as defined by FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
- (2) **“Antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
- (3) **“Approval authority”** means the City’s Community Development Director or his/her designee
- (4) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
- (5) **“Concealed”** or **“concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural

EXHIBIT A

and/or built environment such that the average, untrained observer cannot directly view the equipment and would not likely recognize the existence of the wireless facility or concealment technique.

- (6) **“Decorative pole”** means any pole that includes decorative or ornamental features and/or materials intended to enhance the appearance of the pole. Decorative or ornamental features include, but are not limited to, fluted poles, ornate luminaires and artistic embellishments. Cobra head luminaires and octagonal shafts made of concrete or crushed stone composite material are not considered decorative or ornamental.
- (7) **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (8) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded.
- (9) **“Ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.
- (10) **“Modify” or “modification”** means the same as defined in Section 9661.1 of the Agoura Hills Municipal Code as may be amended or superseded.
- (11) **“Personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
- (12) **“Personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.
- (13) **“Public right-of-way”** means the same as defined in Section 9661.1 of the Agoura Hills Municipal Code as may be amended or superseded.
- (14) **“RF”** means radio frequency or electromagnetic waves.

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- (15) **“Section 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.
- (16) **“Small wireless facility”** or **“small wireless facilities”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(1), as may be amended or superseded.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the City's jurisdictional boundaries.
- (b) **Small Wireless Facility Permit.** A small wireless facility permit, subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on any new structure, existing structure, or replacement of an existing structure.
- (c) **Request for Approval Pursuant to Section 6409.** Requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 are not subject to this policy, but shall be reviewed in accordance with Section 6409.
- (d) **Other Permits and Approvals.** In addition to a small wireless facility permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small wireless facility permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any small cell permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 2.2. SMALL WIRELESS FACILITY PERMIT APPLICATION REQUIREMENTS

- (a) **Application Contents.** All applications for a small wireless facility must include all the information and materials required in this subsection (a).

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- (1) **Application Form.** The applicant shall submit a complete, duly executed small wireless facility permit application using the then-current City form which must include the information described in this subsection (a).
- (2) **Application Fee.** The applicant shall submit all applicable small wireless facility permit application fees. Batched applications must include the applicable small wireless facility permit application fee for each small wireless facility in the batch. Applications submitted without the required fee shall be deemed incomplete. The fee shall be in amounts established by separate City Council resolution.
- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings electronically and on plain bond paper, prepared, signed and stamped by a California licensed or registered structural engineer, depicting all the existing and proposed improvements, equipment and conditions related to the proposed project and project site, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, underground structures or conduits, trees and other landscape features. If the applicant proposes to use existing poles or other existing structures, the structural engineer must certify that the existing above and below ground structure will be adequate for the purpose. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 200 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; (iv) traffic control plans for the installation phase, stamped and signed by a California licensed or registered civil or traffic engineer; and (v) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (4) **Site Plan.** The applicant shall submit a survey prepared, signed and stamped by a California licensed or registered surveyor. The survey must identify and depict all existing boundaries, encroachments, buildings, walls, fences and other structures within 200 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights,

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

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(/). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding as provided in Section 2.4.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Site Agreement.** For any small wireless facility proposed to be installed on any structure located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City

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that states the terms and conditions for such use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's site agreement shall be an independently sufficient basis to deny the application.

- (10) **Property Owner's Authorization.** The applicant must submit a written authorization signed by the property owner that authorizes the applicant to submit a wireless application in connection with the subject property and, if the wireless facility is proposed on a utility-owned support structure, submit a written final utility design authorization from the utility.
 - (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.
 - (12) **Justification for Non-Preferred Location or Structure.** If a facility is proposed anywhere other than the most preferred location or the most preferred structure within 500 feet of the proposed location as described in Section 2.6, the applicant shall demonstrate with clear and convincing written evidence all of the following:
 - (A) A clearly defined technical service objective and a map showing areas that meet that objective;
 - (B) A technical analysis that includes the factual reasons why a more preferred location(s) and/or more preferred structure(s) within 500 feet of the proposed location is not technically feasible;
 - (C) Bare conclusions that are not factually supported do not constitute clear and convincing written evidence.
 - (13) **Insurance.** The applicant shall submit proof that the facility will be adequately insured as required by this Policy.
- (b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other

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related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.3. SMALL WIRELESS FACILITY PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small wireless facility permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).
- (1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Potential applicants may generally submit either one application or one batched application per appointment as provided below. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to offer an appointment within five working days after the approval authority receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- (2) **Pre-Submittal Conferences.** The City encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; batched application processing; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.
- (b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection (b), a "substantive response" must include the materials identified as incomplete in the approval authority's notice.

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- (c) **Batched Applications.** Applicants may submit applications individually or in a batch; provided, that the number of small wireless facilities in a batch should be limited to five and all facilities in the batch should be substantially the same with respect to equipment, configuration, and support structure. Applications submitted as a batch shall be reviewed together, provided that each application in the batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, all other applications in the same batch shall be automatically deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (d) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.4. APPROVALS AND DENIALS

- (a) **Review by Approval Authority.** The approval authority shall review a complete and duly filed application for a small wireless facility and may act on such application without prior notice or a public hearing.
- (b) **Independent expert.** The approval authority 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 RF 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 less preferred 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;

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- (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 a fee resolution adopted by the City Council.

(c) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a small wireless facility permit when the approval authority finds:

- (9) The proposed project meets the definition for a “small wireless facility” as defined by the FCC;
- (10) The proposed facility would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
- (11) The proposed facility would not be located on a prohibited support structure identified in this Policy;
- (12) The proposed facility would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
- (13) The proposed facility complies with all applicable design standards in this Policy; and
- (14) The applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.

(d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any small wireless facility permit application as may be necessary or appropriate to ensure compliance with this Policy.

(e) **Decision Notices.** Within five calendar days after the approval authority acts on a small wireless facility permit application or before the FCC Shot Clock expires (whichever occurs first), the approval authority shall notify the applicant by written notice. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.

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- (f) **Appeals.** Any decision by the approval authority shall be final and not subject to any administrative appeals.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
 - (2) **Permit Renewal.** Within one (1) year before the expiration date of the permit, the permittee may submit an application for permit renewal. To be eligible for renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with the permit and all applicable provisions in the Agoura Hills Municipal Code and this Policy that exist at the time the decision to renew the permit is rendered. The approval authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, the permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety reasons.
 - (3) **Post-Installation Certification.** Within 90 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.
 - (4) **Expiration Due to Non-Use.** The small wireless facility permit will automatically expire six (6) months from the approval date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any

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federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this use period expires, the City will not extend the use period, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small wireless facility permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small wireless facility permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Agoura Hills Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Agoura Hills Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Agoura Hills Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a

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state of emergency within the City. The approval authority may issue a stop work order for any activities that violate this condition in whole or in part.

- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (9) **Permittee's Contact Information.** 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:
 - (i) Identity, including the name, address and twenty-four-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.
 - (ii) The legal status of the owner of the small wireless facility, including official identification numbers and Federal Communications Commission certification.
 - (iii) Name, address and telephone number of the property owner if different than the permittee.
- (10) **Transfer or Assignment.** Upon any transfer or assignment of the permit, the approval authority 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 FCC and the California Public Utilities Commission. If the approval authority determines that the proposed operation is not consistent with the existing permit, the approval authority shall notify the permittee who shall either revise the application or apply for modification of the permit pursuant to the requirements of this Policy.
- (11) **No Interferences with Public Facilities.** 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

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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.

- (12) **Required Notices and Signs.** At all times, all required notices and signs shall be posted on the site as required by the FCC 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.
- (13) **RF Compliance.** The small wireless facility shall be subject to the RF emissions and monitoring requirements found in Section 9661.13 of the Agoura Hills Municipal Code. At all times, the permittee shall ensure that the small wireless facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration, and shall timely submit monitoring reports required pursuant to section 9661.13 of the Agoura Hills Municipal Code. If the approval authority determines there is good cause to believe that the facility may emit FR emissions that are likely to exceed Federal Communications Commission standards, the approval authority may require post-installation testing, at permittee's expense, or the approval authority 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.
- (14) **Performance Bond.** 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 approval authority in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.)
- (15) **Noise Complaints.** 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 approval authority. If the approval authority determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the approval authority may impose that condition on the project after notice and a public hearing.

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(A condition incorporating the applicable noise limitations of this Policy shall also be included in the conditions of approval.)

- (16) **Indemnification.** 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 the 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. Permittee's exercise of its rights under the small wireless permit shall be an express acknowledgment that its indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the small cell permit.
- (17) **Successors.** "Permittee" shall include the applicant and all successors in interest to this permit.
- (18) **Permit Revocation.** The approval authority may recall this approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance thereafter continues, the approval authority may, following notice and an opportunity for the permittee to be heard (which hearing may be limited to written submittals), revoke this approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
- (19) **Record Retention.** Applicable to small wireless facilities within public rights-of-way. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any

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ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

(20) **Abandoned Wireless Facilities.** A small wireless facility shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Agoura Hills Municipal Code. In the event that the permittee does not comply with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

(21) **Landscaping; Tree Protection.** Prior to issuance of a building permit, the applicant shall obtain the approval authority's approval of a tree protection plan prepared by a certified arborist if the installation of the small wireless facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site-specific criteria (e.g., location of tree, size and type of tree, etc.), a radius greater than ten (10) feet may be required by the approval authority. The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless otherwise approved by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

(b) **Additional Conditions for Right of Way Facilities.** In addition to all other conditions adopted by the approval authority and required under subsection (a) above, permits issued under this Policy for small wireless facilities in the public right of way shall be automatically subject to the conditions in this subsection (b).

(1) **City Engineer's Authority.** The small wireless facility shall be subject to such conditions, changes or limitations as are from time to time deemed

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necessary by the city engineer for the purpose of: (i) protecting the public health, safety, and welfare; (ii) preventing interference with pedestrian and vehicular traffic; and/or (iii) 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 small wireless 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) **No Transfer Prior to Construction.** The permittee shall not transfer the permit to any person prior to completion of construction of the facility covered by the permit.
- (3) **Existing Structures.** 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 small wireless 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) **Damage; Injury.** The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
- (5) **Duty to Repair.** 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 small wireless 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.

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- (6) **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 (\$2,000,000.00) for each occurrence and four million dollars (\$4,000,000.00) 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.
- (7) **Meter Removal.** 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.
- (8) **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

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by the approval authority that the small wireless 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.

- (9) **Performance Bond.** Prior to any construction in connection with the permit, the permittee shall post a performance bond from a surety and in a form acceptable to the approval authority in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the approval authority shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (10) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless

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facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility unless and until any outstanding costs have been reimbursed to the City by the permittee.

- (11) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

SECTION 2.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** To better assist applicants and the approval authority to understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve less-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- (b) **Locational Preferences.** The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) Any property or public right of way in the BP-M zoning district; or any public right of way identified in the City's General Plan as an arterial road.
 - (2) Any location more than 100 feet from any residential zoning district that is either:

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- (i) On a property in the BP-OR, CRS, CS, U, or CR zoning districts; or
 - (ii) In a public right of way that is both in the BP-OR, CRS, CS, U, or CR zoning districts and identified in the City's General Plan as a collector or local road.
- (3) Any location more than 100 feet from any residential zoning district that is either:
 - (i) On a property in the CN or SH zoning districts; or
 - (ii) In a public right of way that is both in the CN or SH zoning districts and identified in the City's General Plan as a collector or local road.
- (4) Any location 100 feet or closer to any residential zoning district that is either:
 - (i) On any property in the BP-OR, CRS, CS, U, or CR zoning districts; or
 - (ii) In a public right of way that is both in the BP-OR, CRS, CS, U, or CR zoning districts and identified in the City's General Plan as a collector or local road.
- (5) Any location 100 feet or closer to any residential zoning district that is either:
 - (i) On any property in the CN or SH zoning districts; or
 - (ii) In a public right of way that is both in the CN or SH zoning districts and identified in the City's General Plan as a collector or local road.
- (6) Any location in a public right of way that is both identified in the City's General Plan as a collector road and in any zoning district other than the BP-OR, CRS, CS, U, CR, CN, or SH zoning districts.
- (7) Any location in any public right of way that is both identified in the City's General Plan as a collector or local road and in any zoning district other than the BP-OR, CRS, CS, U, CR, CN, or SH zoning districts.
- (8) Any location in a public right of way that is both in a Specific Plan and identified in the City's General Plan as a collector or local road.
- (9) Any property owned in common by a homeowners' association, even if located in a residential zone, but only if the small wireless facility is building-mounted or roof-mounted.
- (10) Any location on any property or in any public right of way in the OS-DR or OS-R zoning districts, but only if the permittee also obtains approval, if

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required, pursuant to Section 9487 and 9821.5 of the Agoura Hills Municipal Code.

- (c) **Support Structures in Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) Existing or replacement streetlight or traffic signal poles;
 - (2) Existing or replacement wood utility poles.
 - (3) New, non-replacement streetlight or traffic signal poles;
 - (4) New, non-replacement poles;
- (d) **Prohibited Support Structures in Public Rights-of-Way.** The City prohibits small wireless facilities to be installed on the following support structures:
- (1) Decorative poles;
 - (2) Signs;
 - (3) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

SECTION 2.7. DESIGN STANDARDS

(a) General Standards.

- (1) **Noise.** Noise emitted from small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable City noise control standards. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - (A) 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 p.m. and 7:00 a.m.
 - (B) 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 planned development 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

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at the property line of any residentially-improved or residential-zoned property.

- (C) 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.
- (2) **Lights.** No small wireless facility shall 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.
- (3) **Landscape Features.** No small wireless facility shall encroach into the protected zone of any protected oak tree. Small wireless facilities shall not displace any other existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscaping and landscape maintenance must be performed in accordance with all applicable provisions of the Agoura Hills Municipal Code.
- (4) **Site Security Measures.** Each small wireless 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. Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority may also 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. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

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- (5) **Signage; Advertisements.** No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
 - (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
 - (7) **Overall Height.** Small wireless facilities must comply with the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95 and 128). Any poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC 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 demonstrating compliance with this paragraph as part of its application.
 - (8) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume.
- (b) **Small Wireless Facilities within Public Rights-of-Way.**
- (1) **Poles.** Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited.
 - (A) **Minimum height.** No facility shall be located on a pole that is less than twenty-five (25) feet in height.
 - (B) **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.

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- (C) **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.
 - (D) **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 (6) feet.
 - (E) 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.
 - (F) 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.
- (2) Each small wireless facility shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
 - (3) Each component part of a small wireless 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 of the Agoura Hills Municipal Code.
 - (4) 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.
 - (5) 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.

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- (6) All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground.
- (7) **Accessory Equipment.**
 - (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record. When above ground is the only technically 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.
 - (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced. The noise restrictions apply to underground equipment as well, especially ventilation/cooling equipment.
 - (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with

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applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.

- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
 - (E) **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters unless the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.
 - (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district; unless the applicant demonstrates that no more preferred installation configuration would be technically feasible as supported by clear and convincing evidence in the written record. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- (8) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the streetlight that is to be removed. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same illuminance, height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

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- (9) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas in a radome above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the radome and stand-off bracket. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (10) **New, Non-Replacement Poles.** Applicants that propose to install a small wireless facility on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (11) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (12) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (13) **Obstructions; Public Safety and Circulation.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground, wet or dry utility infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or

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other ingress and egress points to any building appurtenant to the rights-of-way; (F) access to any fire escape or (G) above ground improvements must be setback a minimum of 2 feet from existing or planned sidewalks, trails, curb faces or road surfaces.

- (14) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
 - (15) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
 - (16) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal unless required by the utility company.
 - (17) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
 - (18) **Lines of Sight.** No wireless facility shall be located so as to obstruct pedestrian or vehicular lines-of-sight.
- (c) **Small Wireless Facilities Outside of Public Rights-of-Way**
- (1) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
 - (2) **Traffic safety.** All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

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- (3) **Backup Power Sources.** The approval authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (5) **Freestanding Small Wireless Facilities.** All new poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (6) **Small Wireless Facilities on Existing Buildings.**
 - (A) Building-mounted and roof-mounted facilities shall be incorporated into the design elements of the building and camouflaged, concealed, or screened from view with materials that match the building in color, texture and type of material.
 - (B) If the applicant demonstrates with clear and convincing evidence that integration with existing building features is technically infeasible, the applicant may propose to conceal the wireless facility within a new architectural element designed to match or mimic the architectural details of the building including length, width, depth, shape, spacing, color, and texture.
 - (C) No part of the small wireless 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.

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- (D) 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.
 - (E) 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.
 - (F) 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.
 - (G) Each roof-mounted facility shall be screened from above if visible from higher elevations.
- (7) **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 eighteen (18) months after the date of application), light poles, and trees of comparable heights.
 - (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 FCC 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. 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 shall not be more than 10 percent taller than other adjacent structures, nor extend the existing structure to a height of more than 50 feet or by more than 10 percent, whichever is greater.
 - (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) Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary

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for the proper functioning of the facility. The applicant shall submit documentation with the application to demonstrate compliance with this requirement.

(8) Accessory Equipment.

- (A) Accessory equipment for building-mounted or roof-mounted facilities shall 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 camouflaged, concealed, or screened from view with materials and paint that match the building in in color, texture and type of material.
- (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 that is architecturally treated and/or screened from view by landscape plantings, walls, or opaque fencing.

(9) Small Wireless Facilities on Existing Lattice Tower Utility Poles

- (A) Antennas must be flush-mounted to the side of the pole and designed to match the color and texture of the pole. If technologically infeasible to flush-mount an antenna, it may be mounted on an extension arm that protrudes as little as possible from the edge of the existing pole provided that the wires are concealed inside the extension arm. The extension arm shall match the color of the pole.
- (B) Wiring must be concealed in conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
- (C) All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the structures on which they are mounted. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
- (D) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.

(10) Small Wireless Facilities on Existing Wood Utility Poles.

EXHIBIT A

- (A) All antennas must be installed within a cylindrical shroud (radome) above the top of the pole unless the applicant demonstrates that mounting antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record.
 - (B) All antennas must be concealed within a shroud (radome) designed to match the color or the pole.
 - (C) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.
 - (D) If it is technically infeasible to mount an antenna above the pole it may be flush-mounted to the side of the pole. If it is technically infeasible to flush-mount the antenna to the side of the pole it may be installed at the top of a stand-off bracket/extension arm that protrudes as little as possible beyond the side of the pole. Antenna shrouds on stand-off brackets must be a medium gray color to blend in with the daytime sky.
 - (E) Wires must be concealed within the antenna shroud, extension bracket/extension arm and conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
 - (F) All accessory equipment must be placed underground, unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the pole. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
- (11) Small Wireless Facilities on Existing Water Tanks.**
- (A) Small Wireless Facilities on Existing Water Tanks.
 - (B) Antennas must be mounted as close as possible to the side of the tank.
 - (C) No antenna or accessory equipment shall project above the top of the tank.
 - (D) Wires must be concealed within a shroud or conduit that is flush-mounted to the tank. The conduit and mounting hardware shall match the color of the tank.

EXHIBIT A

- (E) Antennas and antenna shrouds shall be painted to match the color of the tank.
- (F) All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground equipment cabinets, if any, shall be dark green in color.
- (G) All water tank installations must also be approved by the Water District having jurisdiction/ownership.