



City of Huntington Beach Planning and Building Department
STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Ricky Ramos, Senior Planner ~~z-r~~
DATE: November 8, 2011

SUBJECT: ZONING TEXT AMENDMENT NO. 09-002 (WIRELESS COMMUNICATION FACILITIES)

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

PROPERTY

OWNER: Not applicable

LOCATION: Citywide

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

The City is proposing to amend Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) pursuant to City Council direction in 2009 to address the permitting and entitlement of wireless communication facilities (WCF) within 500 feet of school sites. In addition, it was requested that staff amend the ordinance to also prohibit WCFs on city-owned park land that is adjacent to an elementary school.

In order to facilitate review of Zoning Text Amendment (ZTA) No. 09-002, staff has prepared a legislative draft of the revised code section (Attachment 1) and a version of the section with the changes incorporated for easier readability (Attachment 2), with side notations indicating which parts are new, revised, or existing. Finally, a matrix comparing the approval process in the existing and the draft ordinance is also provided (Attachment No. 4).

The most significant changes that ZTA No. 09-002 would implement include:

1. Requiring a Conditional Use Permit (CUP) (public hearing) for any new ground or utility mounted WCF in contrast to current code which permits them with a Wireless Permit and building permit only (no public hearing) if consistent with zoning standards (Section 230.96(E.3)); and
2. Adding a provision for a Denial of Effective Service appeal to allow an applicant to assert that Federal law preempts the City from denying an application because denial would effectively prohibit wireless service. The appeal fee will be used by the City to hire a consultant to review and verify if a proposed WCF is needed to fill an existing gap in service and if it is located in the least obtrusive location feasible so as to eliminate a gap in service (Section 230.96(F)).

In addition, the following notable changes to the existing ordinance are also proposed:

1. New Purpose Section (Section 230.96(A));
2. Added and revised various definitions (Section 230.96(B));
3. Simplified Applicability Section (Section 230.96(C));
4. Clarified Exceptions Section (Section 230.96(D));
5. Revised Process to Install and Operate WCFs Section including (Section 230.96(E));
 - a. A Wireless Permit will no longer be required for all WCFs. Instead a WCF will either require a Wireless Permit or a Conditional Use Permit.
 - b. Applicants will no longer have to demonstrate an existing gap in service and least obtrusive location feasible for the WCF except as part of a Denial of Effective Service appeal.
 - c. A requirement for co-location has been added.
 - d. An additional 10 feet of height permitted beyond base zoning district maximum as outlined in Section 230.72 is now specified.
 - e. The requirements for Design Review have been revised.
6. Revised WCF Standards Section by prohibiting chain link fencing for equipment enclosure, deleting a requirement to record the conditions on the property title, adding a co-location provision, retaining a portion of the interference provision, expanding the types of agreements necessary on City property, deleting most of the provisions regarding WCFs on public property which may be incorporated in the Municipal Code in the future, and incorporating other minor revisions throughout (Section 230.96(G)).

CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS

The ZTA is applicable citywide.

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

Not Applicable

MANDATORY PROCESSING DATE(S):

Not Applicable

Staff commenced the ZTA upon receiving Council's direction in 2009 but put it on hold pending the outcome of some lawsuits. A second study session is scheduled for November 22, 2011 to continue the discussion and review of ZTA No. 09-002 with a public hearing tentatively scheduled for the Planning Commission meeting of December 13, 2011.

CEQA ANALYSIS/REVIEW

ZTA No. 09-002 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act because the request is a minor amendment to a zoning ordinance that does not change the development standards intensity or density.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The proposed amendments to the City's existing ordinance were prepared with input from the City Attorney's Office, Police Department, and Public Works Department. The City Attorney's Office is preparing a memorandum to address the comments received from the wireless industry. The memo will be provided upon completion.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

No public meetings have been held regarding the request. However, the legislative draft was provided to the wireless industry for review starting August 25, 2011 with comments due by September 12, 2011 (Attachments 6 and 7). The wireless industry has many concerns about the draft including, among others:

1. Requirements are burdensome;
2. Does not treat all users of public right-of-way equally;
3. Lacking standards for the public right-of-way;
4. Opposed to expansion of WCF categories that require a CUP;
5. Opposed to Denial of Effective Service Appeal Section; and
6. Does not provide a balanced view by noting benefits of WCFs.

In addition, a courtesy notice of the November 8th study session meeting was sent to residents who spoke at the City Council meetings regarding the proposed WCFs at Harbour View Park, Bolsa View Park, and Community United Methodist Church; the wireless industry; and interested parties. The Planning Commission meeting, tentatively scheduled for December 13th, will be a fully noticed public hearing.

PLANNING ISSUES

The primary planning issue related to the request pertains to the appropriate approval process and requirements for WCFs throughout the city in consideration of maximizing the goals of the General Plan.

ATTACHMENTS:

1. Legislative Draft HBZSO Section 230.96 - ZTA No. 09-002 (October 2011)
2. Proposed HBZSO Section 230.96 (staff annotated changes)
3. Existing HBZSO Section 230.96 (staff annotated changes)
4. Matrix: WCF Approval Process in Existing and Draft Ordinance (October 2011)
5. Examples: WCF Designs (Non-Stealth, Stealth, Completely Stealth)
6. Summary Table: Wireless Industry Comments (September 19, 2011)
7. Comment Letters:
 - T-Mobile/Martin L. Fineman dated September 12, 2011
 - Verizon/Sarah L. Burbidge dated September 12, 2011
 - NextG/Joe Milone dated September 12, 2011
 - California Wireless Association/Sean Scully dated September 12, 2011

DRAFT

LEGISLATIVE DRAFT

City of Huntington Beach Zoning Text Amendment No. 09-002 (October 2011)

230.96 Wireless Communication Facilities

- A. Purpose. ~~The purpose of this~~ This Section of the Zoning Code is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life by regulating the location, height and physical characteristics and provide for orderly and efficient placement of Wireless Communications Facilities in the City of Huntington Beach. (3779-10/07)

Because of the potential negative aesthetic impacts of Wireless Communications Facilities, including visual blight and diminution of property value, the City endeavors to locate antennas within commercial, industrial and other non-residential zones, screen them from view, and encourage co-location with other Wireless Communication Facilities. However, the Federal Telecommunications Act, specifically 47 U.S.C. Section 332(c)(7), preempts local zoning where a Wireless Facility is necessary to remedy a significant gap in the Wireless Provider's service. Consequently, where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations. A myriad of factors are involved in determining if a gap is significant, such as: whether the gap affects a commuter highway; the nature and character of the area and the number of potential users affected by the alleged lack of service; whether the signal is weak or nonexistent, and whether the gap affects a commercial district. Consequently, the City will require scientific evidence from an expert in the field demonstrating the existence of a significant gap in service, and a lack of feasible alternative sites. The applicant will be required to pay for the cost of said expert opinion.

- B. Definitions. For the purpose of this sSection, the following definitions for the following terms shall apply: (3568-9/02)
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a ~~wireless communication facility.~~ Wireless Communication Facility. (3568-9/02)
 2. ~~—2—~~ Co-Location or Co-Located. The location or placement of multiple antennas Wireless Communication Facilities which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)

DRAFT

- ~~3.~~ 3. Completely Stealth. Any Wireless Communication Facility. Any ~~stealth facility~~ that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to, architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend in with the existing building, ~~flagpoles, church steeples, fire towers, and flag poles and light standards.~~ ~~(3568-9/02, 3779-10/07)~~ of a typical diameter.
- ~~4.~~ 4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
- ~~5.~~ 5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
- ~~6.~~ 6. Modified Facility. An existing Wireless Communication Facility where the antennas and/or supporting structure are proposed to be altered in any way from their existing condition, including like-for-like replacement but excluding co-location.
- ~~6.7.~~ Pre-existing Wireless Facility. Any ~~wireless communication facility~~ Wireless Communication Facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities/wireless antennas that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
- ~~8.~~ 7. Public Right-of-Way The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways, private streets with public access easements within the City's boundaries, and City owned properties, as they now exist or hereafter will exist.
- ~~7.9.~~ Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
- ~~8.10.~~ 8. Stealth Facility or Techniques. Any ~~wireless communication facility~~ Wireless Communication Facility, including any appurtenances and equipment, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition. Examples of completely stealth facility Stealth Technique include, but are not limited to, monopalms/monopines. (3568-9/02)
- ~~9.~~ 9.11. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational ~~f~~facility lighting, or any other utility which meets the purpose and intent of this definition. ~~(3568-9/02, 3779-10/07)~~
(3568-9/02, 3779-10/07)
- ~~10.~~

DRAFT

~~10.12. Wall Mounted.~~ Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)

~~11.13. — 11. Wireless Communication Facility or Facility; or Wireless Antenna.~~ An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02, 3779-10/07)

~~C. Applicability.~~

~~1. All wireless communication facilities~~ This ordinance shall apply to all Wireless Communication Facilities which are erected, located, placed, ~~constructed or modified within the City of Huntington Beach shall comply with these regulations provided that:~~ (3568-9/02, 3779-10/07).

~~a. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines.~~ (3568-9/02, 3779-10/07)

~~b. All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies.~~ (3568-9/02)

~~e. D. Exceptions. The following Wireless Communication Facilities shall be exempt from this Ordinance.~~

~~1. Any facility, which is subject to a previously approved and valid conditional use permit/entitlement, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. Modifications. However, modifications outside the scope of the valid conditional use permit will require submittal/entitlement or any modification to an existing facility that does not have a previously approved and valid entitlement is subject to the requirements of a Wireless Permit application. this ordinance.~~ (3568-9/02, 3779-10/07)

~~2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements.~~ (3568-9/02, 3779-10/07)

~~a.~~

~~2. Any antenna structure that is one meter (39.37 inches) or less in diameter and that is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC).~~ (3568-9/02).

~~3. b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in~~

DRAFT

~~commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)~~

~~4. e. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)~~

~~d. Any antenna structure that is designed to receive radio broadcast transmission. (3568-9/02)~~

~~e. Any antenna structure used by authorized amateur radio stations licensed by the FCC. (3568-9/02)~~

~~D.~~

E. Process to Install and Operate Wireless Permit Required Communication Facilities.

~~No wireless communication facility~~ Facility shall be installed anywhere in the City without submission of first securing either a Wireless Permit or a Conditional Use Permit as required below.

~~1. Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the Planning and Building Department for a Wireless Permit by submitting a completed Wireless Permit Application ("Application") and paying all required fees. The Application shall be in the form approved by the Director, and at a minimum shall provide the following information: (3779-10/07)~~

~~1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage. (3779-10/07)~~

~~a. 2. Compatibility Precise location of the Facility.~~

~~a.b. Evidence that the Facility is compatible with the surrounding environment or that the facilities are facility is architecturally integrated into a structure. (3779-10/07)~~

~~b.c. 3. Screening or camouflaging Evidence that the facility is screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).~~

~~(3779-10/07)~~

~~4. Massing~~

~~e.d. Evidence that the massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3779-10/07)~~

~~d.e. 5. No Evidence that no portion of a wireless communication facility shall project the Facility will encroach over property lines. (3779-10/07)~~

~~6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size: (3779-10/07)~~

DRAFT

- ~~a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review: (3779-10/07)~~
- ~~i. All transmit and receive frequencies; (3779-10/07)~~
- ~~ii. Effective Radiated Power (ERP); (3779-10/07)~~
- ~~iii. Antenna height above ground, and (3779-10/07)~~
- ~~iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3779-10/07)~~

~~f. b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation Property owner authorization or evidence of fee ownership of property where the Facility will be installed.~~

~~g. License, lease, franchise, or other similar agreement from the City for any Facility to be placed over, within, on, or beneath City property.~~

~~h. Locations of all other Wireless Antennas within 1,000 feet of a proposed ground mounted facility causing interference with the City's. Co-location of ground mounted facilities immediately shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.~~

~~i. Any other relevant information as required by the Director of Planning and Building.~~

~~The Planning and Building Department will initially review and determine if the Application is complete. The City may deem the Application incomplete and require re-submittal if any of the above information is not provided.~~

~~2. Director Approval. Following submittal of a complete Application, the City will determine whether the Facility may be approved by the Director or whether a Conditional Use Permit or other entitlement is required. Wireless Permit applications will be processed based upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07) location and type of antennas defined in herein. Although said classifications are assigned at project intake, a re-evaluation of antenna classifications may occur at any point in the process including at the time of review by the Director, Zoning Administrator, Planning Commission or City Council.~~

~~c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3779-10/07)~~

~~d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3779-10/07)~~

DRAFT

~~_____~~ e. The applicant shall insure A Facility not subject to any other discretionary approval may be administratively approved by the Director by issuing a Wireless Permit if it is:

- a. Co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights, and employs Stealth Techniques such that the co-located Wireless Facility is compatible with surrounding buildings and land uses; or

A modified Facility that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. — (3779-10/07)

E. Additional Permit Required:

- 1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: — (3779-10/07)

a.b.a. — Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, plus up to an additional 10 feet of height as permitted in Section 230.72 and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3779-10/07)

b. Completely stealth facilities A Facility that complies with the base district height limit; or
— (3779-10/07)

b.c.e. — Facilities in non-residential districts that are in compliance with the maximum building plus up to an additional 10 feet of height as permitted within the zoning district; in Section 230.72, is Completely Stealth, and — (3779-10/07) is not ground or utility mounted:

i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or — (3779-10/07)

ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or — (3779-10/07)

iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. — (3779-10/07)

- 2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: — (3779-10/07)

a. Exceeding the maximum building height permitted within the zoning district; or

b. Visible from beyond the boundaries of the site at eye level (six feet); or

DRAFT

~~e. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or~~

~~d. Not designed to be architecturally compatible with surrounding buildings and land uses.~~

~~e. As The Director may require conditions of approval of the Facility in order to minimize adverse health, safety and welfare impacts to the community.~~

A decision of the Director to grant a Wireless Permit shall become final ten (10) days following the date of the decision unless an appeal to the Planning Commission is filed as provided in Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

The Director shall issue findings of approval that the Facility meets the above criteria and is not a detriment to the health, safety and welfare of the community.

3. Zoning Administrator Approval. In the event the Director determines that the applicant does not meet the requirements for Director approval of a Wireless Permit, then the applicant shall apply for a Conditional Use Permit (CUP) to the Zoning Administrator pursuant to Chapter 241 of the HBZSO. Notwithstanding any other provisions of the HBZSO, any new ground or utility mounted wireless facilities shall be required to obtain a CUP. CUP applications shall also include the same information required under subsection E.1.

The Zoning Administrator may require, as a condition of approval of the Conditional Use Permit, CUP that the Zoning Administrator shall applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction:—(3779-10/07)

~~i.—a. Completely Stealth installations;—(3779-10/07)~~

~~ii~~

~~b. Stealth Techniques;~~

~~c. Co-location and locating fFacilities within existing building envelopes;—(3779-10/07)~~

~~iii. Minimizing visual prominenee through colorization~~

~~d. Colorization or landscaping;—(3779-10/07) to minimize visual prominence; and/or~~

~~ive. Removal or replacement of fFacilities that beeoameare obsolete.—(3779-10/07)~~

~~3. Further conditions of approval of a facility CUP may be imposed as provided in Chapter 241 of the HBZSO. The Zoning Administrator's decision may be appealed to the Planning Commission in accordance with Chapter 248 of the HBZSO.~~

4. Design Review. Design review shall be required for any wireless communication facilities Wireless Communication Facilities pursuant to the HBZSO as well as those located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, way and on or within 300 feet of a residential district, and or use in areas designated by the City Council. Design.

DRAFT

Notwithstanding any other provisions of the HBZSO, design review is not required for wireless communication facilities Wireless Communication Facilities that comply with may be approved by the Director pursuant to subsection 4- E.2 (Director Approval) above and have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.

F. Applicant May Assert Federal Preemption At Time of Appeal To Planning Commission.

1. If the decision on the Wireless Permit or Conditional Use Permit is appealed (either by applicant or an aggrieved party) to the Planning Commission, the Applicant may assert that Federal Law preempts the City from denying the application because denial would effectively prohibit Wireless Service. The applicant shall pay a Denial of Effective Service appeal fee in an amount to be established by City Council Resolution, which amount shall be the estimated cost for the City to retain an independent, qualified consultant to evaluate any technical aspect of a proposed Wireless Communications Facility, including, but not limited to, issues involving whether a significant gap in coverage exists. A Denial of Effective Service appeal must be submitted prior to the expiration of the appeal period for a Wireless Permit or Conditional Use Permit.

2. The Director shall establish the form of the Denial of Effective Service appeal. At a minimum, the Applicant shall provide the following information as part of its appeal:

In order to prevail in establishing a significant gap in coverage claim the applicant shall establish at minimum the following based upon substantial evidence:

- a. Evidence demonstrating the existence and nature of a significant gap in service in the vicinity of the proposed Facility, including but not limited to whether the gap pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.
- b. Evidence demonstrating that the applicant has pursued other feasible sites for locating the Facility, but that they are unavailable on commercially practicable terms.
- c. Evidence demonstrating the radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region, and for the City of Huntington Beach.
- d. Radio frequency propagation maps demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- e. Radio frequency drive tests demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- f. Reports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed Facility.
- g. Any proprietary information disclosed to the city or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law. In the event the applicant does not provide this information, the City may conclusively presume that no denial of effective service exists.

DRAFT

All of the information noted above shall be submitted to the City within 30 days of the filing of the Denial of Effective Service appeal unless an extension is granted by the Director.

3. The Denial of Effective Service appeal shall be considered concurrently with the Wireless Permit or CUP appeal hearing before the Planning Commission. Prior to the scheduling of the public hearing on the Wireless Permit or CUP appeal, the City Attorney shall be authorized to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicant's denial of effective service claims.

G. Wireless Communication Facility Standards: The following standards shall apply to all wireless communication facilities: ~~—(3779-10/07)~~

—1. Aesthetics:

— a. Facility/Screening: All screening used in conjunction with a wall or roof mounted ~~facility~~ Wireless Antenna shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground or utility mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)

— b2. Equipment/Accessory Structures: All equipment associated with the operation of the ~~facility~~ Wireless Antenna, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located; ~~and Section 230.76.~~ Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. ~~If chain Chain link is used, then it must be vinyl coated fencing and not include barbed wire are prohibited.~~ (3568-9/02)

— e3. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

— 24. Building Codes: To ensure the structural integrity of ~~wireless communication facilities~~ Wireless Communication Facilities, the owners of a ~~facility~~ shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)

— 3. Conditions of Approval: ~~Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title.~~ (3568-9/02)

— 45. Co-Location: Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.

6. Federal and State Requirements: All Wireless Communication Facilities must meet or exceed current federal and state laws, standards and regulations of the FCC, and any other agency of the state ~~federal or federal-state government with the authority to regulate wireless communication facilities~~ Wireless Communication Facilities. (3568-9/02)

DRAFT

7. Interference: To eliminate interference, at all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. —5The applicant shall cease operation of any Wireless Antenna causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)

8. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)

—69. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility-Wireless Antenna. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)

—710. Monitoring: ~~For all wireless communication facilities, the~~The applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. ~~(3568-9/02, 3779-10/07)~~

—811. Signs: ~~The facility~~Wireless Antenna shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage.— (3568-9/02, 3779-10/07)

~~(3568-9/02, 3779-10/07)~~

—9. Facilities on Public Property: ~~Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.~~

~~(3779-10/07)~~

—10

12. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility-Wireless Antenna. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning and Building Departments may be required. (3779-10/07)

—11. —13. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way.

(3779-10/07)

~~(3779-10/07)~~

12

H. Facilities on Public Property. Any Wireless Communication Facility to be placed over, within, on, or beneath City property shall obtain a license, lease, franchise, or other similar agreement from the City prior to issuance of a Wireless Permit or Conditional Use Permit.

(3779-10/07)

DRAFT

I. Facilities in the Public Right-of-Way. Any wireless communication facility Wireless Communication Facility to be placed over, within, on or beneath the public right-of-way shall ~~comply with the following standards:~~ obtain an encroachment permit from the Department of Public Works and comply with the Undergrounding Ordinance (Chapter 17.64 of HBMC). (3568-9/02, 3779-10/07)

~~a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state franchised telephone corporation exempt from local franchise requirements. (3568-9/02, 3779-10/07)~~

~~b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02, 3779-10/07)~~

~~c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time. (3568-9/02, 3779-10/07)~~

~~d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional-use permits, and all applicable fees. (3568-9/02, 3779-10/07)~~

~~e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02, 3779-10/07)~~

~~f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project. (3568-9/02, 3779-10/07)~~

~~g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way. (3568-9/02, 3779-10/07)~~

13. J. Facility Removal.

DRAFT

~~a.~~ Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

~~b.~~ K. Cessation of Operation:

1. Abandonment. Within thirty (30) calendar days of cessation of operations of any ~~wireless communication facility~~ Wireless Communication Facility approved under this ~~s~~Section, the operator shall notify the ~~Planning Department~~ Director in writing. The ~~facility~~ Wireless Antenna shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

~~1.~~ a. The City has determined that the operator has resumed operation of the ~~wireless communication facility~~ Wireless Communication Facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

~~2.~~ b. The City has received written notification of a transfer of ~~wireless communication operator~~ the Wireless Communication Facility. (3568-9/02, 3779-10/07)

~~c.~~ 2. City Initiated Abandonment: A ~~facility~~ Wireless Antenna that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the ~~facility~~ Wireless Antenna and the owner(s) of the premises upon which the ~~facility~~ antenna is located. Such notice may be delivered in person, or mailed to the address(es) stated on the ~~facility~~ permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)

~~d.~~ 3. Removal of Abandoned Facility Wireless Antenna: The operator of the ~~facility~~ Wireless Antenna and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the ~~facility~~ Wireless Antenna in its entirety and restore the premises, or (2) provide the ~~Planning Department~~ Director with written objection to the City's determination of abandonment. (3779-10/07)

~~a.~~ Any such objection shall include evidence that the ~~facility~~ Wireless Antenna was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the ~~f~~ Facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

~~e.~~ Removal by City: ~~b.~~ At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned ~~facility~~ Wireless Antenna and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed ~~facility~~ Antenna (or any part thereof). The owner of the premises upon which the abandoned ~~facility~~ Antenna was located, and all prior operators of the ~~facility~~ Antenna, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed ~~facility~~ Wireless Antenna, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02, 3779-10/07)

DRAFT

PROPOSED HBZSO SECTION 230.96

City of Huntington Beach
Zoning Text Amendment No. 09-002
(October 2011)

R - REVISED
E - EXISTING
N - NEW

230.96 Wireless Communication Facilities

- A. Purpose.** This Section of the Zoning Code is to protect public safety, general welfare, and quality of life by regulating the location, height and physical characteristics and provide for orderly and efficient placement of Wireless Communications Facilities in the City of Huntington Beach.

Because of the potential negative aesthetic impacts of Wireless Communications Facilities, including visual blight and diminution of property value, the City endeavors to locate antennas within commercial, industrial and other non-residential zones, screen them from view, and encourage co-location with other Wireless Communication Facilities. However, the Federal Telecommunications Act, specifically 47 U.S.C. Section 332(c)(7), preempts local zoning where a Wireless Facility is necessary to remedy a significant gap in the Wireless Provider's service. Consequently, where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations. A myriad of factors are involved in determining if a gap is significant, such as: whether the gap affects a commuter highway; the nature and character of the area and the number of potential users affected by the alleged lack of service; whether the signal is weak or nonexistent, and whether the gap affects a commercial district. Consequently, the City will require scientific evidence from an expert in the field demonstrating the existence of a significant gap in service, and a lack of feasible alternative sites. The applicant will be required to pay for the cost of said expert opinion.

- B. Definitions.** For the purpose of this Section, the following definitions for the following terms shall apply: (3568-9/02)

1. **Accessory Structure.** Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a Wireless Communication Facility. (3568-9/02)
2. **Co-Location or Co-Located.** The location or placement of multiple Wireless Communication Facilities which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
3. **Completely Stealth.** Any Wireless Communication Facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to, architecturally screened roof mounted antennas, façade mounted antennas treated as architectural elements to blend in with the existing building, church steeples, fire towers, and flag poles and light standards of a typical diameter.

DRAFT

4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
6. Modified Facility. An existing Wireless Communication Facility where the antennas and/or supporting structure are proposed to be altered in any way from their existing condition, including like-for-like replacement but excluding co-location.
7. Pre-existing Wireless Facility. Any Wireless Communication Facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted wireless antennas that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
8. Public Right-of-Way. The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways, private streets with public access easements within the City's boundaries, and City owned properties, as they now exist or hereafter will exist.
9. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
10. Stealth Techniques. Any Wireless Communication Facility, including any appurtenances and equipment, which is designed to blend into the surrounding environment. Examples of Stealth Technique include, but are not limited to, monopoles/monopines. (3568-9/02)
11. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational Facility lighting, or any other utility which meets the purpose and intent of this definition. (3568-9/02, 3779-10/07)
12. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)
13. Wireless Communication Facility or Facility or Wireless Antenna. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service.
- C. Applicability. This ordinance shall apply to all Wireless Communication Facilities which are erected, located, placed or modified within the City of Huntington Beach.

DRAFT

R D. Exceptions. The following Wireless Communication Facilities shall be exempt from this Ordinance.

- R
1. Any Facility, which is subject to a previously approved and valid entitlement, may be modified within the scope of the applicable permit without complying with these regulations. However, modifications outside the scope of the valid entitlement or any modification to an existing facility that does not have a previously approved and valid entitlement is subject to the requirements of this ordinance.
 2. Any antenna structure that is one meter (39.37 inches) or less in diameter that is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof.

- E
3. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna.
 4. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot.
 5. Any antenna structure used by authorized amateur radio stations licensed by the FCC.

N E. Process to Install and Operate Wireless Communication Facilities.

R No Facility shall be installed anywhere in the City without first securing either a Wireless Permit or a Conditional Use Permit as required below.

1. Wireless Permit Application. The applicant shall apply to the Planning and Building Department for a Wireless Permit by submitting a completed Wireless Permit Application ("Application") and paying all required fees. The Application shall be in the form approved by the Director, and at a minimum shall provide the following information:

N a. Precise location of the Facility.

R b. Evidence that the Facility is compatible with the surrounding environment or that the facility is architecturally integrated into a structure.

c. Evidence that the facility is screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).

d. Evidence that the massing and location of the proposed facility are consistent with surrounding structures and zoning districts.

e. Evidence that no portion of the Facility will encroach over property lines.

N f. Property owner authorization or evidence of fee ownership of property where the Facility will be installed.

DRAFT

- Z
- g. License, lease, franchise, or other similar agreement from the City for any Facility to be placed over, within, on, or beneath City property.
 - h. Locations of all other Wireless Antennas within 1,000 feet of a proposed ground mounted facility. Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.
 - i. Any other relevant information as required by the Director of Planning and Building.

Z

The Planning and Building Department will initially review and determine if the Application is complete. The City may deem the Application incomplete and require re-submittal if any of the above information is not provided.

2. Director Approval. Following submittal of a complete Application, the City will determine whether the Facility may be approved by the Director or whether a Conditional Use Permit or other entitlement is required. Wireless Permit applications will be processed based upon the location and type of antennas defined in herein. Although said classifications are assigned at project intake, a re-evaluation of antenna classifications may occur at any point in the process including at the time of review by the Director, Zoning Administrator, Planning Commission or City Council.

A Facility not subject to any other discretionary approval may be administratively approved by the Director by issuing a Wireless Permit if it is:

- Z
- a. Co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights, and employs Stealth Techniques such that the co-located Wireless Facility is compatible with surrounding buildings and land uses; or
 - b. A modified Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72 and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
 - c. A Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72, is Completely Stealth, and is not ground or utility mounted:

Z

The Director may require conditions of approval of the Facility in order to minimize adverse health, safety and welfare impacts to the community.

A decision of the Director to grant a Wireless Permit shall become final ten (10) days following the date of the decision unless an appeal to the Planning Commission is filed as provided in Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

The Director shall issue findings of approval that the Facility meets the above criteria and is not a detriment to the health, safety and welfare of the community.

3. Zoning Administrator Approval. In the event the Director determines that the applicant does not meet the requirements for Director approval of a Wireless Permit, then the

DRAFT

applicant shall apply for a Conditional Use Permit (CUP) to the Zoning Administrator pursuant to Chapter 241 of the HBZSO. Notwithstanding any other provisions of the HBZSO, any new ground or utility mounted wireless facilities shall be required to obtain a CUP. CUP applications shall also include the same information required under subsection E.1.

The Zoning Administrator may require, as a condition of approval of the CUP that the applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction:

- a. Completely Stealth installations;
- b. Stealth Techniques;
- c. Co-location and locating Facilities within existing building envelopes;
- d. Colorization or landscaping to minimize visual prominence; and/or
- e. Removal or replacement of Facilities that are obsolete.

Further conditions of approval of a facility CUP may be imposed as provided in Chapter 241 of the HBZSO. The Zoning Administrator's decision may be appealed to the Planning Commission in accordance with Chapter 248 of the HBZSO.

4. Design Review. Design review shall be required for any Wireless Communication Facilities pursuant to the HBZSO as well as those located on public right-of-way and on or within 300 feet of a residential district or use in the City.

Notwithstanding any other provisions of the HBZSO, design review is not required for Wireless Communication Facilities that may be approved by the Director pursuant to subsection E.2 (Director Approval) above and have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.

F. Applicant May Assert Federal Preemption At Time of Appeal To Planning Commission.

1. If the decision on the Wireless Permit or Conditional Use Permit is appealed (either by applicant or an aggrieved party) to the Planning Commission, the Applicant may assert that Federal Law preempts the City from denying the application because denial would effectively prohibit Wireless Service. The applicant shall pay a Denial of Effective Service appeal fee in an amount to be established by City Council Resolution, which amount shall be the estimated cost for the City to retain an independent, qualified consultant to evaluate any technical aspect of a proposed Wireless Communications Facility, including, but not limited to, issues involving whether a significant gap in coverage exists. A Denial of Effective Service appeal must be submitted prior to the expiration of the appeal period for a Wireless Permit or Conditional Use Permit.
2. The Director shall establish the form of the Denial of Effective Service appeal. At a minimum, the Applicant shall provide the following information as part of its appeal:

In order to prevail in establishing a significant gap in coverage claim the applicant shall establish at minimum the following based upon substantial evidence:

DRAFT

7

7

- a. Evidence demonstrating the existence and nature of a significant gap in service in the vicinity of the proposed Facility, including but not limited to whether the gap pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.
- b. Evidence demonstrating that the applicant has pursued other feasible sites for locating the Facility, but that they are unavailable on commercially practicable terms.
- c. Evidence demonstrating the radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region, and for the City of Huntington Beach.
- d. Radio frequency propagation maps demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- e. Radio frequency drive tests demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- f. Reports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed Facility.
- g. Any proprietary information disclosed to the city or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law. In the event the applicant does not provide this information, the City may conclusively presume that no denial of effective service exists.

All of the information noted above shall be submitted to the City within 30 days of the filing of the Denial of Effective Service appeal unless an extension is granted by the Director.

3. The Denial of Effective Service appeal shall be considered concurrently with the Wireless Permit or CUP appeal hearing before the Planning Commission. Prior to the scheduling of the public hearing on the Wireless Permit or CUP appeal, the City Attorney shall be authorized to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicant's denial of effective service claims.

7

G. Wireless Communication Facility Standards. The following standards shall apply to all wireless communication facilities: (3779-10/07)

1. Screening. All screening used in conjunction with a wall or roof mounted Wireless Antenna shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground or utility mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
2. Equipment/Accessory Structures. All equipment associated with the operation of the Wireless Antenna, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located and Section 230.76. Screening materials and support structures

DRAFT

- R housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. Chain link fencing and barbed wire are prohibited. (3568-9/02) R
- E 3. General Provisions. All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)
- R 4. Building Codes: To ensure the structural integrity of Wireless Communication Facilities, the owners of a Facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)
- N 5. Co-Location: Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.
- R 6. Federal and State Requirements: All Wireless Communication Facilities must meet or exceed current federal and state laws, standards and regulations of the FCC, and any other agency of the federal or state government with the authority to regulate Wireless Communication Facilities. (3568-9/02)
7. Interference: To eliminate interference, at all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any Wireless Antenna causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)
- E 8. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)
- R 9. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the Wireless Antenna. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)
10. Monitoring: The applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit.
11. Signs: The Wireless Antenna shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage. (3568-9/02, 3779-10/07)
12. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed Wireless Antenna. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning and Building Departments may be required. (3779-10/07)
- E 13. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate

DRAFT

E Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07) E

R H. Facilities on Public Property. Any Wireless Communication Facility to be placed over, within, on, or beneath City property shall obtain a license, lease, franchise, or other similar agreement from the City prior to issuance of a Wireless Permit or Conditional Use Permit. (3779-10/07)

I. Facilities in the Public Right-of-Way. Any Wireless Communication Facility to be placed over, within, on or beneath the public right-of-way shall obtain an encroachment permit from the Department of Public Works and comply with the Undergrounding Ordinance (Chapter 17.64 of HBMC). (3568-9/02, 3779-10/07)

E J. Facility Removal. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

R K. Cessation of Operation.

1. Abandonment. Within thirty (30) calendar days of cessation of operations of any Wireless Communication Facility approved under this Section, the operator shall notify the Director in writing. The Wireless Antenna shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

a. The City has determined that the operator has resumed operation of the Wireless Communication Facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

b. The City has received written notification of a transfer of the Wireless Communication Facility. (3568-9/02, 3779-10/07)

2. City Initiated Abandonment: A Wireless Antenna that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the Wireless Antenna and the owner(s) of the premises upon which the antenna is located. Such notice may be delivered in person, or mailed to the address(es) stated on the permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)

3. Removal of Abandoned Wireless Antenna: The operator of the Wireless Antenna and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the Wireless Antenna in its entirety and restore the premises, or (2) provide the Director with written objection to the City's determination of abandonment. (3779-10/07)

a. Any such objection shall include evidence that the Wireless Antenna was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the Facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

DRAFT

- Ⓡ b. At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned Wireless Antenna and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed Antenna (or any part thereof). The owner of the premises upon which the abandoned Antenna was located, and all prior operators of the Antenna, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed Wireless Antenna, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. Ⓡ

EXISTING ORDINANCE

R - REVISED
D - DELETED
NC - NO CHANGE

5. The prices of items sold from a cart or kiosk must appear in a prominent, visible location in legible characters. The price list size and location shall be reviewed and approved by the Planning Director. (3249-6/95; 3525-2/02)
 6. The sale of alcoholic beverages shall be prohibited. (3249-6/95)
 7. The number of employees at a cart or kiosk shall be limited to a maximum of two (2) persons at any one time. (3249-6/95)
 8. Fire extinguishers may be required at the discretion of the Fire Department. (3249-6/95)
 9. All cart and kiosk uses shall be self contained for water, waste, and power to operate. (3249-6/95)
 10. A cart or kiosk operator shall provide a method approved by the Planning Director for disposal of business related wastes. (3249-6/95, 3525-2/02)
- D. Parking. Additional parking may be required for cart or kiosk uses by the Planning Director. (3249-6/95, 3525-2/02)
- E. Review; Revocation. The Planning Department shall conduct a review of the cart or kiosk operation at the end of the first six (6) month period of operation. At that time, if there has been a violation of the terms and conditions of this section or the approval, the approval shall be considered for revocation. (3249-6/95; 3525-2/02)
- E. Neighborhood Notification. Pursuant to Chapter 241. (3525-2/02, 3710-6/05)

230.96 Wireless Communication Facilities

R A. Purpose. The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life in the City of Huntington Beach. (3779-10/07)

NC B. Definitions. For the purpose of this section, the following definitions for the following terms shall apply: (3568-9/02)

- R
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility. (3568-9/02)
 2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
 3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.1

- NC 4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
- NC 5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
- R 6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
- NC 7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
- R 8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility. (3568-9/02)
- NC 9. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational facility lighting, or any other utility which meets the purpose and intent of this definition. (3568-9/02, 3779-10/07)
- 10. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)
- R 11. Wireless Communication Facility or Facility. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02, 3779-10/07)

C. Applicability.

- 1. All wireless communication facilities which are erected, located, placed, constructed or modified within the City of Huntington Beach shall comply with these regulations provided that: (3568-9/02, 3779-10/07)

- a. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines. (3568-9/02, 3779-10/07)
- b. All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies. (3568-9/02)

ATTACHMENT NO. 3.2

R c. Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. Modifications outside the scope of the valid conditional use permit will require submittal of a Wireless Permit application. (3568-9/02, 3779-10/07)

R 2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements. (3568-9/02, 3779-10/07)

a. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02)

NC b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)

c. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)

D d. Any antenna structure that is designed to receive radio broadcast transmission. (3568-9/02)

NC e. Any antenna structure used by authorized amateur radio stations licensed by the FCC. (3568-9/02)

R D. Wireless Permit Required. No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information: (3779-10/07)

D 1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage. (3779-10/07)

R 2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure. (3779-10/07)

3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet). (3779-10/07)

4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3779-10/07)

5. No portion of a wireless communication facility shall project over property lines. (3779-10/07)

D 6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size: (3779-10/07)

ATTACHMENT NO. 3.3

- D a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review: (3779-10/07)
- i. All transmit and receive frequencies; (3779-10/07)
 - ii. Effective Radiated Power (ERP); (3779-10/07)
 - iii. Antenna height above ground, and (3779-10/07)
 - iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3779-10/07)

- R b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)

- D c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3779-10/07)
- d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3779-10/07)
- e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. (3779-10/07)

R E. Additional Permit Required.

1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: (3779-10/07)
- a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3779-10/07)
 - b. Completely stealth facilities that comply with the base district height limit; or (3779-10/07)
 - c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and (3779-10/07)
- D i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or (3779-10/07)
- ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3779-10/07)

ATTACHMENT NO. 3.4

D iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. (3779-10/07) D

R 2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: (3779-10/07) R

- D
- a. Exceeding the maximum building height permitted within the zoning district; or
 - b. Visible from beyond the boundaries of the site at eye level (six feet); or
 - c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
 - d. Not designed to be architecturally compatible with surrounding buildings and land uses.

R

e. As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction: (3779-10/07)

- i. Stealth installations; (3779-10/07)
- ii. Co-location and locating facilities within existing building envelopes; (3779-10/07)
- iii. Minimizing visual prominence through colorization or landscaping; (3779-10/07)
- iv. Removal or replacement of facilities that become obsolete. (3779-10/07)

3. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

F. Facility Standards: The following standards apply to all wireless communication facilities: (3779-10/07)

1. Aesthetics:

- a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
- b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire. (3568-9/02)

NC c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

ATTACHMENT NO. 3.5

- 2. Building Codes:** To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)
- 3. Conditions of Approval:** Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)
- 4. Federal Requirements:** All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities. (3568-9/02)
- 5. Lighting:** All outside lighting shall be directed to prevent “spillage” onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)
- 6. Maintenance:** All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)
- 7. Monitoring:** For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02, 3779-10/07)
- 8. Signs:** The facility shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage. (3568-9/02, 3779-10/07)
- 9. Facilities on Public Property:** Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit. (3779-10/07)
- 10. Landscaping:** Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required. (3779-10/07)
- 11. Utility Agreement:** If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City’s Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07)
- 12. Facilities in the Public Right-of-Way.** Any wireless communication facility to be placed over, within, on or beneath the public right-of-way shall comply with the following standards: (3568-9/02, 3779-10/07)
- a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state-franchised telephone corporation exempt from local franchise requirements. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.0

D

- b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02, 3779-10/07)
- c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time. (3568-9/02, 3779-10/07)
- d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional use permits, and all applicable fees. (3568-9/02, 3779-10/07)

D

- e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02, 3779-10/07)
- f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project. (3568-9/02, 3779-10/07)
- g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way. (3568-9/02, 3779-10/07)

13. Facility Removal.

NC

- a. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

R

- b. Cessation of Operation: Within thirty (30) calendar days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

- 1. The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.7

R

2. The City has received written notification of a transfer of wireless communication operators. (3568-9/02, 3779-10/07)

- c. Abandonment: A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)
- d. Removal of Abandoned Facility: The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the facility in its entirety and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment. (3779-10/07)

R

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

- e. Removal by City: At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.8

Comparison of Approval Process – Existing vs. Draft Wireless Communication Facilities (WCF) Ordinance (Oct. 2011)

Wireless Permit (WP) and Conditional Use Permit (CUP) Requirements:

WCF Type	Existing Ordinance	Proposed Ordinance
1. Co-located WCF - Existing height - Stealth design for co-located WCF	Permitted in Residential + Non-Residential Zones by WP only.	No change.
2. Modified WCF - Height complies - Stealth design		No change.
3. New WCF - Height complies - Completely Stealth design		Similar except CUP required if new ground or utility mounted WCF.
4. New ground or utility mounted WCF - Height complies - Stealth design	Permitted in Non-Residential Zones only by WP only.	CUP required if new ground or utility mounted WCF.

Notes:

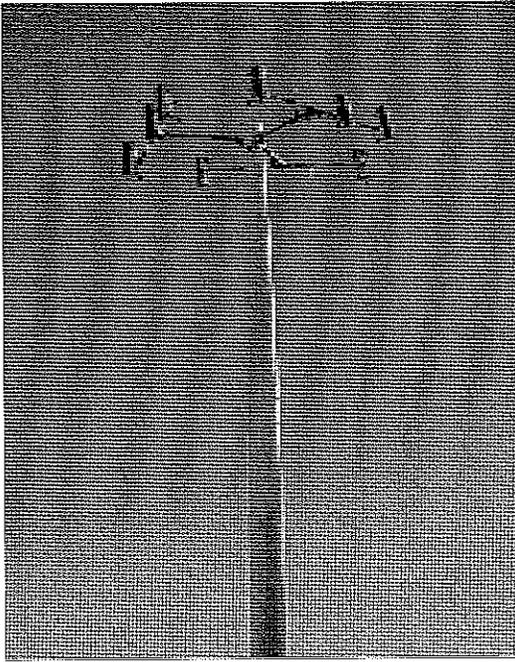
- Any WCF with a valid entitlement may be modified within the scope of the entitlement without compliance with WCF ordinance.
- If a WCF does not meet the requirements for approval of a WP, then a CUP is required.

Design Review Requirements:

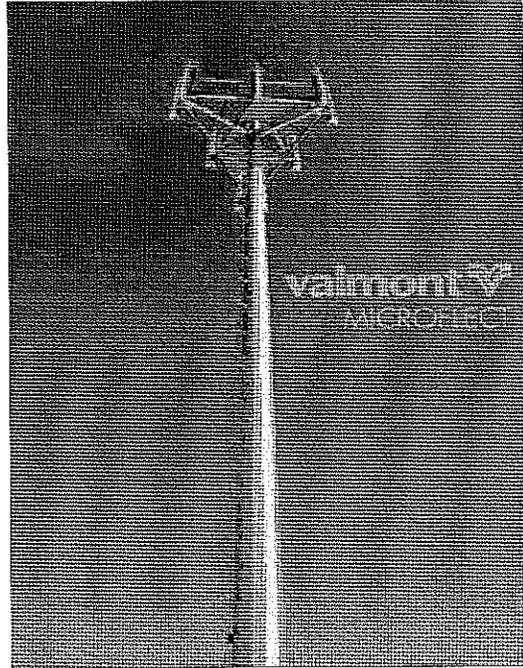
WCF Type	Existing Ordinance	Proposed Ordinance
1. Co-located WCF - Existing height - Stealth design for co-located WCF	Design Review required only if CUP required in the following locations: 1. Redevelopment areas; 2. Public right-of-way; 3. OS-PR (Open Space – Parks and Recreation) zone; 4. PS (Public-Semipublic) zone; 5. Specific Plans; 6. On or within 300 ft. of residential district; and 7. Areas designated by City Council. No Design Review required if only a WP is required.	Similar except: 1. Added WCFs in/abutting/ adjoining City facilities; 2. Added WCFs in/abutting/ adjoining OS-PR and OS-S (Open Space – Shoreline) zones; 3. Added WCFs abutting/ adjoining General Plan primary and secondary entry nodes; 4. Added on or within 300 ft. of residential use; and
2. Modified WCF - Height complies - Stealth design		
3. New WCF - Height complies - Completely Stealth design		
4. New ground or utility mounted WCF - Height complies - Stealth design		

Examples of Wireless Communication Facility Designs:

NON-STEALTH FACILITIES

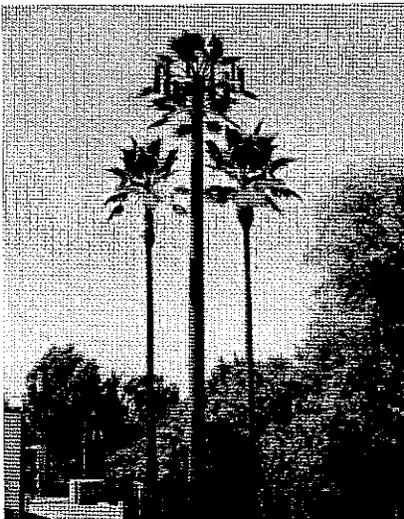


Monopole



Monopole

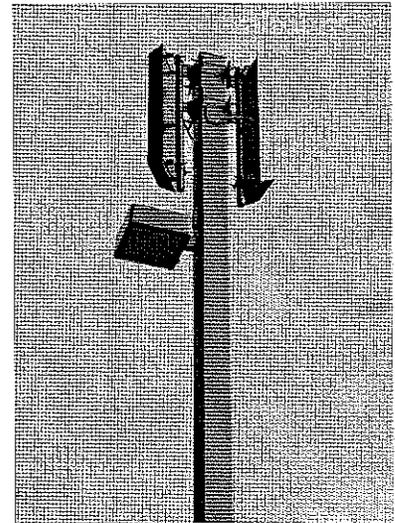
STEALTH FACILITIES



Monopalm

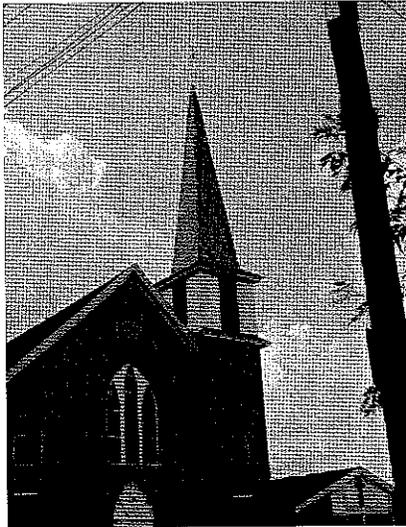


Monopine

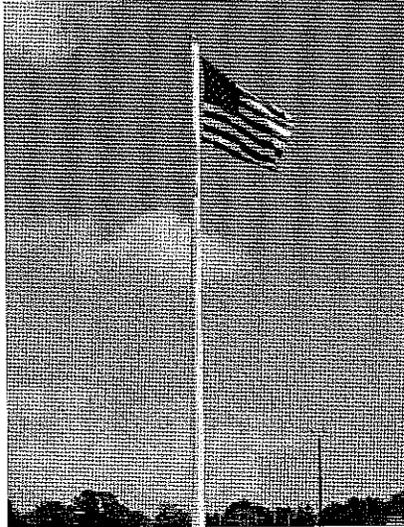


Light Standard

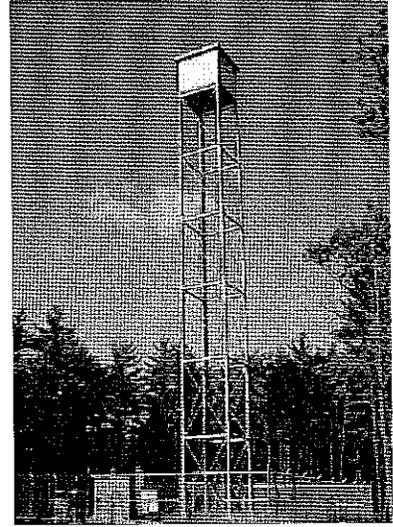
COMPLETELY STEALTH FACILITIES



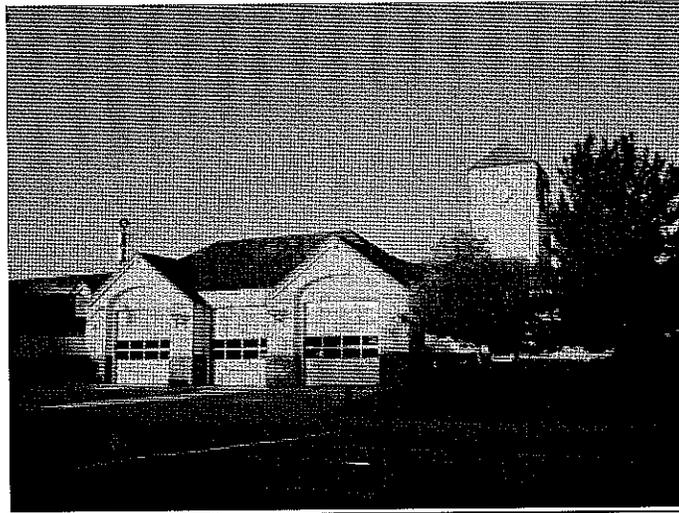
Church Steeple



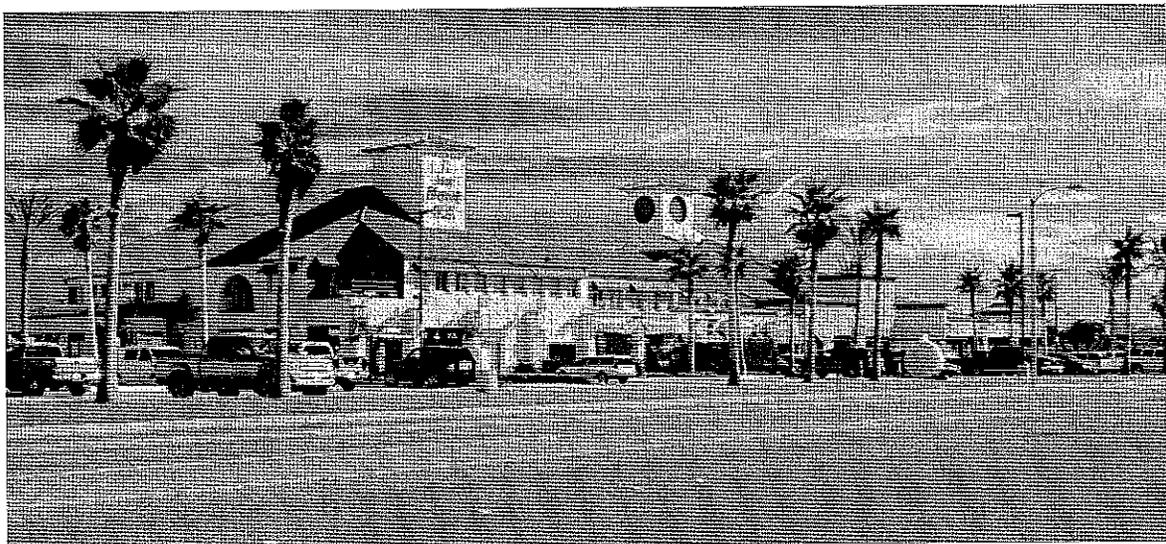
Flag Pole



Fire Tower



Edwards Fire Station Tower Element



Peter's Landing Tower Element

Comments Received from Wireless Industry
(September 19, 2011)

Source	Comment
T-Mobile	<p>1. Denial of Effective Service Appeal –</p> <ul style="list-style-type: none"> ▪ Not City's role to apply federal law. ▪ Shift's City's litigation costs to applicants. ▪ Burdensome and subjective demonstration of "need". ▪ Significant gap to be applied/interpreted by courts and not by cities. ▪ Various problems with evidence required
	<p>2. Wireless Permit Requirements –</p> <ul style="list-style-type: none"> ▪ Requirements on applicants are burdensome. ▪ Screening requirements in 230.96(E)(1)(c) not required of other utilities violate Public Utilities Code (PUC) Sec. 7901 by effectively precluding WCFs in public right-of-way (ROW). ▪ 230.96(E)(1)(g) requirement for franchise agreement runs afoul of PUC Sec. 7901 because telephone corporations already have statewide franchise to occupy ROW. ▪ 230.96(E)(1)(h) co-location requirement overly broad and burdensome because it does not limit its reach to proposals that seek to construct a new support structure. ▪ 230.96(E)(2) allowing Director to re-evaluate WCF deprives applicants of objective standards.
	<p>3. CUP Requirements –</p> <ul style="list-style-type: none"> ▪ CUP requirements are overly burdensome and contrary to Govt. Code Sec. 65850.6 which permits co-location without discretionary permits. ▪ CUP requirements suffer from same flaws as Wireless Permit requirements. ▪ CUP requirements for utility mounted facilities, which do not apply to other utilities in the ROW, violate PUC Sec. 7901. ▪ Requirements to remove or replace obsolete WCFs are preempted. ▪ CUP requirement for any new ground or utility mounted WCF rejected by Congress and interferes with business operations of carriers.
Verizon	<p>1. Denial of Effective Service Appeal –</p> <ul style="list-style-type: none"> ▪ Beyond City's purview and creates impermissible burden on federal statutory rights. ▪ Confidentiality of submittal requirements not guaranteed under Public Records Act. <p>Recommendation: Remove Section</p>
	<p>2. Public ROW and Utility Easement –</p> <ul style="list-style-type: none"> ▪ Section 230.96(E)(1)(g) requirement for franchise or lease agreement does not comply with PUC Sec. 7901. <p>Recommendation: Clarify that a lease is required only for use of City-owned structures within the ROW, but not for the use of the ROW itself.</p> <ul style="list-style-type: none"> ▪ Section 230.96(G)(13) requirement for franchise agreement would violate <i>Williams Communications, LLC v. City of Riverside (2003)</i> and PUC Section 7901 because wireless telephone providers are exempt from any local franchise agreements.
	<p>3. CUP Requirements –</p> <ul style="list-style-type: none"> ▪ Opposed to expansion of WCF categories that require a CUP.

	<ul style="list-style-type: none"> ▪ Section 230.96(E) provision to allow re-evaluation of WCF classification creates uncertainty in the process contrary to the Permit Streamlining Act. ▪ Section 230.96(E)(1)(i) creates an open-ended list of submission requirements. Recommendation: Don't replace existing code with a new, murky process.
	4. Like-for-like replacements should be permitted by right. There is no legitimate land use rationale for discretionary review in such circumstances. City risks intruding on the exclusive federal authority to regulate technical aspects of wireless services (<i>see Clarkstown, supra</i>).
	5. City has no justification for requiring a carrier to submit its leases, particularly as leases often contain proprietary or confidential information.
NextG	1. NextG incorporates its prior comments and briefings in the current litigation with the City setting forth its position regarding how the City's requirements violate PUC Sec. 7901. The draft ordinance does not remedy the fundamental problem that it would empower the City to deny NextG access to the public ROW in violation of the PUC. It also does not treat all users of public ROWs in an equivalent manner.
	2. Section A (Purpose) – Delete unsubstantiated claims that WCFs have negative impacts “including visual blight and diminution of property value.”
	3. Section B (Definitions) – Recommends clarifying several definitions and adding other definitions.
	4. Section E(1) (Wireless Permit) – <ul style="list-style-type: none"> ▪ The City needs to provide guidelines for satisfying the evidence requirements that a facility is compatible with the surrounding environment. ▪ Property owner authorization or evidence of fee ownership should not apply to WCFs in the public ROW. ▪ Co-location should be required where economically and technically feasible. ▪ The requirement to submit any other relevant information as required by the Director is vague and overbroad. <p>Section E(2) (Director Approval) –</p> <ul style="list-style-type: none"> ▪ The City's ability to re-evaluate a WCF provides the applicant with no certainty. ▪ Co-location should also include co-location on an existing utility pole. ▪ Why is the City intentionally calling out for different treatment of ground or utility mounted facilities? ▪ What are the required findings for Director approval? <p>Section E(3) (ZA Approval) – The City may want to consider administrative review for new ground or utility mounted facilities at low visibility sites.</p> <p>Section E(4)(Design Review) – DRB required for facilities in the public ROW ONLY if within 300 feet of a residential district.</p>
	5. Section F (Denial of Effective Service appeal) – <ul style="list-style-type: none"> ▪ Special fee is unreasonable. ▪ Request for monthly volume of calls, etc. inappropriate as it requires disclosure of confidential/proprietary information. ▪ City Attorney's ability to subpoena is unprecedented and hostile particularly to WCFs in the public ROW.

	<p>6. Section G (Standards) –</p> <ul style="list-style-type: none"> ▪ Screening - Having a requirement that a ground or utility mounted facility blend into a building or other concealing structure is physically impossible. ▪ Monitoring – Delete sentence and replace with: The applicant shall provide the City with the property owner’s authorization to locate on his property prior to the issuance of a building permit. ▪ Landscaping – What is the relevance of vehicular traffic to landscaping?
	<p>7. Section K(3)(b) (Removal of Abandoned WCF) – The costs of removal, repair, and restoration should be reasonable. Replace “entire” with “reasonable”.</p>
CalWA	<ol style="list-style-type: none"> 1. Opposed to lack of distinct regulations for WCFs in the public ROW. Support regulations and ministerial process for WCFs in public ROW. 2. Opposed to intention to discourage WCFs in residential areas which are increasingly underserved due to fewer land lines and more telecommuting/home office. 3. Remove onerous requirements to justify need/gap for WCFs which is not required of any other land use or business and not under the purview of local planning/zoning. 4. Ordinance should present a more balanced and tolerant view of WCFs which are considered a Utility by definition in the CA Constitution. WCFs are critical to public safety, emergency services, healthcare, and our economy. The draft ordinance does not regulate WCFs fairly like other utilities. 5. The claim that WCFs have negative impacts on property values is unsubstantiated. There are studies that confirm no such impacts. 6. The application of additional aesthetic regulations can significantly impact the ability of WCFs to function properly thereby requiring more WCFs and adding costs. 7. There are numerous General Plan goals, objectives, and policies that speak to the importance of and support the continued development of WCFs. 8. Need a definition for Distributed Antenna System with separate development standards and administrative process. Only those that can’t meet the standards in the public ROW should be subject to Planning review. 9. Sec. D(1)(Exceptions) may be in conflict with Govt. Code Sec. 65850.6 and may need clarification. 10. Sec. E(1)(h)(Co-location) should be consistent with Govt. Code Sec. 65850, exempt completely stealth WCFs, and all co-locations should be ministerial. 11. Sec. E(2) DAS should be Director approval only. 12. Sec. E(2)(a)(Co-location) should allow for added height above existing. 13. Sec. E(2) Don’t require CUP if WCF is completely stealth even if ground/utility mounted. 14. Sec. E(3) Don’t require CUP if WCF is in public ROW. 15. Sec. E(3) Don’t remove existing facilities. Need definition of “obsolete”. 16. Sec. E(4) Don’t require DRB in public ROW. 17. Sec. F Denial of Effective Service appeal – check with attorney. 18. Sec. G(10) Requiring a copy of the lease agreement is irrelevant and should be deleted. 19. Sec. H Requirement for license, lease, franchise, etc. for city property – check with attorney. 20. Sec. I See comment #1 above.



Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

Martin L. Fineman
415.276.6575 tel
415.276.6599 fax

martinfineman@dwt.com

September 12, 2011

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Ricky Ramos
Senior Planner
City of Huntington Beach
Department of Planning and Building
2000 Main Street
Huntington Beach, CA 92648

Re: City of Huntington Beach Draft Wireless Communications Facility Ordinance

Dear Mr. Ramos:

I am writing to you on behalf of our client T-Mobile West Corporation ("T-Mobile") in response to your letter of August 24, 2011 inviting comments on the City of Huntington Beach's legislative draft of proposed revisions (the "Draft Ordinance") to the City's existing Wireless Communications Facilities Ordinance (Huntington Beach Zoning and Subdivision Ordinance Section 230.96). T-Mobile appreciates the invitation to review and comment on the Draft Ordinance and encourages the City to continue a dialog with the wireless industry and other stakeholders as it assesses its current ordinance and any proposed amendments thereto.

T-Mobile respectfully submits that a number of aspects of the Draft Ordinance are contrary to federal or state law, and exceed the City's legitimate land use authority or police power. T-Mobile notes that the Draft Ordinance is ominous from the very start. The purported purpose of the ordinance is "protecting public safety, general welfare, and quality of life." The Draft Ordinance asserts that these interests are jeopardized because of the potential adverse aesthetic impact of wireless communications facilities. However, wireless facilities have no greater aesthetic impact and certainly pose no greater threat to public safety, general welfare, or quality of life than other utilities prevalent throughout the City. Yet, the Draft Ordinance only applies to wireless facilities, while other utilities are not subject to any similarly onerous restrictions or regulations. Furthermore, as discussed in detail below, while the City correctly recognizes that federal law prohibits the City from imposing restrictions that prohibit or have the effect of prohibiting wireless service, it mistakenly attempts to usurp the role of the courts and endow the City Planning Commission with the authority to interpret and apply federal law.

Specifically, T-Mobile objects to: (1) the proposed Denial of Effective Service Appeal regime; (2) the Wireless Permit application and approval requirements; and (3) the Conditional Use

DWT 18114314v1 0048172-000374

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.

100%

ATTACHMENT NO. 7.1

www.dwt.com

Permit application and approval requirements. If adopted as proposed, it is likely that the Draft Ordinance will lead to further litigation involving the City.

1. Denial of Effective Service Appeal

Section 230.96(F) of the Draft Ordinance establishes a new appeal regime that purports to vest the City Planning Commission with authority to consider whether a permit denial amounts to an effective prohibition of service in violation of federal law. However, it is not the role of the Planning Commission, or *any* City body, to apply federal law to an applicant's proposed facility. Thus, the Draft Ordinance steps beyond the City's legitimate zoning regulations and places it in the role the United States Congress gave to the courts. *See* 47 U.S.C. § 332(c)(7).

Indeed, the Draft Ordinance goes further. It requires that an applicant pay the City a "Denial of Effective Services appeal fee," which is designed to pay for the City to hire a consultant to evaluate the proposal and determine whether the applicant has shown that a proposed site is necessary to fill a significant gap in service. Thus, not only is the City attempting to usurp the authority of the courts to interpret federal law, it would require an applicant such as T-Mobile to pay what essentially amounts to the City's litigation costs to make its interpretation. Given that there is no fee shifting provision in 47 U.S.C. § 332(c)(7), this too runs afoul of the Telecommunications Act.

"Congress adopted the [Telecommunications Act] in order to promote competition and higher quality in telecommunications services and to encourage the rapid deployment of new telecommunications technologies. The [Telecommunications Act] furthered these goals by reducing the impediments that local governments could impose to defeat or delay the installation of wireless communications facilities such as cell phone towers, and by protecting against irrational or substanceless decisions by local authorities." *T-Mobile Central, LLC v. Wyandotte County*, 546 F.3d 1299, 1306 (10th Cir. 2008) (internal quotations and citations omitted). Section 332(c)(7) was meant to limit municipalities from restricting or prohibiting wireless services, it was not meant to place affirmative burdens on wireless service providers. *See id.* at 1310 n.5. It is antithetical to the purpose of the statute, and the Telecommunications Act in general, to require a burdensome and subjective demonstration of "need" that invites a city to intrude into the business decisions of wireless service providers. However, by vesting the Planning Commission with the power to determine whether the denial of a particular facility is an effective prohibition, Section F of the Draft Ordinance does allow the City to evaluate the need for a particular provider's service.

Moreover, Section 230.96(F)(2) sets forth "minimums" that an applicant must demonstrate by "substantial evidence" in order to establish that there is a "significant gap" in coverage. The concept of a "significant gap" has been developed by the courts as part of the test applying federal law to allegations that a denial of a permit by a locality amounts to an effective prohibition of service under 47 U.S.C. § 332(c)(7)(B)(i)(II). It is not a concept meant to be applied by or interpreted by cities. Indeed, federal courts have stressed that "significant gap" determinations are extremely fact-specific inquiries that defy any bright-line legal rule." *MetroPCS, Inc. v. City & County of San Francisco*, 400 F.3d 715, 733 (9th Cir. 2005). Yet, the

Draft Ordinance purports to establish specific evidentiary requirements to demonstrate that the proposed facility is necessary to fill a significant gap in coverage.

Specifically, Section 230.96(F)(2)(a) requires that an applicant provide evidence demonstrating the gap, “including but not limited to whether the gap pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.” First, it is vague and nonsensical to require a “minimum” showing that “includ[es], but [is] not limited to” particular evidence. If further evidence is required it must be explicitly spelled out. More importantly, the type of service deficiency the applicant seeks to remedy is not a proper subject of the City’s zoning and land use regulation. As a practical matter, in-building coverage requires the greatest signal strength, and courts have recognized that a lack of sufficient in-building coverage does amount to a “significant gap.” *MetroPCS, Inc. v. City & County of San Francisco*, 2006 WL 1699580 (N.D. Cal. 2006). Furthermore, federal courts have recognized that a significant gap exists where there may be some coverage, but the volume of calls in that area has exceeded traffic capacity, thus blocking calls. *Nextel of New York, Inc. v. City of Mt. Vernon*, 361 F. Supp.2d 336 (S.D.N.Y. 2005). Thus, this requirement is beyond the scope of what a federal court would necessarily demand.

Section 230.96(F)(2)(b) requires evidence that other sites were considered but are not “available on commercially practicable terms.” Contrary to its purported purpose, imposing this requirement will, in some instances, prevent a finding of significant gap only because, for example, there are two viable potential solutions – not because there is no significant gap. For example, where an applicant narrows its search to two possible sites and each is available it can never demonstrate that all other sites are unavailable. This requirement highlights why an effective prohibition inquiry is not susceptible to bright line rules and is only appropriate for the courts to apply.

Section 230.96(F)(2)(c) requires evidence demonstrating radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region and the City of Huntington Beach. Likewise, Sections 230.96(F)(2)(d) & (e) require radio frequency propagation maps and radio frequency drive test results demonstrating the actual radio frequency transmission levels in the vicinity of the proposed facility and any alternatives considered. As an initial matter, the FCC has made clear that its authority over the regulation of radio frequency emissions is exclusive and any attempt by the City to regulate based on radio frequency is federally preempted. *In re Petition of Cingular Wireless LLC for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance are Preempted*, 18 F.C.C.R. 13126, 13132 ¶ 13; see also *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000). Thus, the City has no authority to regulate based on radio frequency requirements. Moreover, determining radio frequency coverage parameters are business decisions that are not within the City’s legitimate land use or police powers. The attempt to regulate the technological operations of a federally licensed wireless carrier is preempted. *New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. 2010).

Section 230.96(F)(2)(f) requires an enormously burdensome volume of an applicant's business data, again aimed at requiring the applicant to prove a need for the proposed facility, unrelated to the City's legitimate regulatory authority. Specifically this section requires, "[r]eports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed facility." In addition to being overly broad, burdensome, and wholly outside the City's zoning authority, ~~this requirement is impractical. None of these terms are defined and a provider cannot provide a meaningful report that could capture calls "not originated" in a particular area.~~

Recognizing that the requirements of Section 230.96(F) are burdensome and intrude upon an applicant's proprietary information and business decisions, Section 230.96(F)(2)(g) purports to keep any proprietary information confidential and not a part of the public record "unless otherwise required by law." Of course, the City can make no guarantee that a request made pursuant to California's Public Records Act would not require disclosure of an applicant's proprietary information.

Ultimately, it is not the City's role to determine whether a particular facility is necessary to fill a significant gap in coverage. It is, first, the applicant's business decision to determine its own need for the proposed facility, and if the City denies the particular facility for otherwise legitimate land use or zoning reasons, it is the role of the courts to determine whether the need for the facility is protected by the Telecommunications Act. The entire scheme proposed by Section F of the Draft Ordinance should be removed.

2. The Wireless Permit Requirements

Section 230.96(E) requires a Wireless Permit for all proposed wireless facilities and sets forth the requirements for approval of a Wireless Permit Application. Several of the Wireless Permit application and approval provisions impose overly burdensome requirements on applicants that exceed the scope of the City's legitimate land use authority or police powers.

Section 230.96(E)(1)(c) requires that a Wireless Permit application include evidence that the proposed facility "is screened or camouflaged by existing topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet)." Placing this general screening requirement on all wireless facilities, regardless of location, violates Public Utilities Code § 7901, because it would effectively preclude wireless facilities from the public rights of way. Section 7901 grants a statewide license to telephone corporations, including wireless providers, to access and use the public rights of way. *Pac. Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal. 2d 766, 774 (1959). Likewise, because other utilities and right of way occupants are not required to screen their facilities from view, it is not a reasonable exercise of the City's authority to regulate the time, place, and manner of right of way access under Public Utilities Code § 7901.1. Similarly, Sections 230.96(E)(1)(g) and 230.96(H) run afoul of Section 7901 because they each require that the applicant for any wireless facility to obtain "a license, lease, franchise, or other similar agreement from the City" before any wireless facility may be placed "over, within, on, or beneath City property." The City

cannot require an applicant to enter into a local franchise because, pursuant to Section 7901, any telephone corporation already possesses a statewide franchise to occupy the public rights of way.

In addition, Section 230.96(E)(1)(h) imposes the overly burdensome requirement that an applicant identify all other wireless antennas within 1000 feet of the proposed facility. This provision is aimed at encouraging co-location of antennas, but does not limit its reach to proposals that seek to construct new support structures. Therefore, it is overly broad and burdensome.

Section 230.96(E)(2) addresses wireless permit applications that may be approved by the Director without a Conditional Use Permit. However, this section allows the Director to re-evaluate antenna classifications at any point in the review process. Thus, the City, at the whim of the Director, is free to change the application requirements for any particular facility at any time, without notice to the applicant. This uncertainty deprives applicants of any objective standards upon which they can rely, and is counter to the stated federal purpose of the Telecommunications Act to expand and promote consumers' access to advanced telecommunications facilities and capabilities. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005).

3. The Conditional Use Permit Requirements

Section 230.96(E)(3) requires that an applicant obtain a Conditional Use Permit ("CUP") for "any new ground or utility mounted wireless facilities." Several of the CUP application and approval provisions impose overly burdensome requirements on applicants that exceed the scope of the City's legitimate land use authority or police powers.

First, the requirement that all new utility mounted wireless facilities obtain a CUP is in contradiction to Government Code § 65850.6, which addresses collocation sites. Section 65850.6 specifically states that, "a collocation facility shall be a 'permitted use not subject to a city or county discretionary permit. . .'" Therefore, the City may not impose a discretionary CUP process on collocation sites, as the Draft Ordinance purports to do.

Second, Section 230.96(E)(3) mandates that an application for a CUP for a wireless facility include all of the information required for a Wireless Permit. Such duplication is unnecessarily burdensome on the applicant and suffers from the same flaws as Section 230.96(E)(1), identified above.

Third, this section also allows the Zoning Administrator to impose further restrictions on an applicant's proposed design and construction. The Zoning Administrator may require an applicant to incorporate: "(a) Completely Stealth installations; (b) Stealth Techniques; (c) Co-location and locating Facilities within existing building envelopes; (d) Colorization or landscaping to minimize visual prominence; and/or (e) Removal or replacement of Facilities that are obsolete." Meanwhile, other utilities and occupants of the public rights of way are not required to obtain CUPs or subject themselves to these discretionary conditions before installing facilities in the public rights of way. Thus, by requiring CUPs for all utility mounted wireless

Mr. Ricky Ramos, Senior Planner
September 12, 2011
Page 6

facilities, and endowing the Zoning Administrator with the discretion to require these various conditions, the Draft Ordinance violates T-Mobile's and other wireless carriers' rights under Section 7901, in excess of the City's authority under Section 7901.1. This provision also violates federal law in that it imposes requirements that are not competitively neutral and non-discriminatory. 47 U.S.C. § 253 (a), (b), (c).

Fourth, Section 230.96(E)(3) purports to allow the Zoning Administrator to require "removal or replacement of Facilities that are obsolete." With all due respect, a City lacks the authority to make determinations about what technologies are "obsolete". As mentioned above, a locality's attempt to regulate the technological operations of a federally licensed wireless carrier is preempted. *New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. 2010).

Finally, but perhaps most fundamentally, the City is seeking to impose a new tier of wireless regulations (conditional use permits for *all* ground-mounted *or* utility pole-mounted wireless facilities) that was rejected by Congress. Local government authority to make decisions regarding the placement, construction and modification of wireless facilities was preserved (in part) but that authority does not extend to interfering in the business operations of wireless carriers, as the Draft Ordinance contemplates.

* * *

For all of these reasons, T-Mobile respectfully asks that the Draft Ordinance be significantly revised to bring it into compliance with state and federal law.

Respectfully yours,

Davis Wright Tremaine LLP



Martin L. Fineman

MACKENZIE & ALBRITTON LLP

220 SANSOME STREET, 14TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

September 12, 2011

By Email & Facsimile

Ricky Ramos
Senior Planner

Department of Planning & Building
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: Huntington Beach Draft Wireless Communications Facilities
Ordinance

Dear Mr. Ramos:

Thank you for speaking with me this morning. On behalf of Verizon Wireless, I am writing to provide our initial comments on the draft wireless ordinance provided to our client ("Draft Ordinance"). We understand that you are gathering input from the interested wireless carriers before scheduling a study session, and we certainly look forward to working with you. As we have had limited time to review the Draft Ordinance, our comments are preliminary; however, as I mentioned, the Draft raises major issues.

As you know, there is increasing public demand in Huntington Beach (the "City") for high quality wireless service, and this demand can be met only by the installation of new antenna facilities as well as the modification of existing sites. It is extremely important that the Draft Ordinance provide workable criteria that permit Verizon Wireless to serve both emergency personnel and the general public, especially in order to meet the growing demand in residential areas.

Verizon Wireless's wireless service provides daily communication for Huntington Beach residents, commuters and its workforce, and is a critical component of the City's emergency response systems. Cell sites now incorporate E-911 equipment, which allows emergency personnel to "pinpoint" the origin of 911 calls from cellular telephones. In short, the service is critical both for everyday users and for emergency purposes.

Our concern is to ensure that Verizon Wireless is able to install and upgrade its facilities and equipment without encountering undue impediments or other barriers that

ATTACHMENT NO. 7.7

Ricky Ramos, Senior Planner
City of Huntington Beach
September 12, 2011

Page 2

would violate federal or state law. In the present situation, the Draft Ordinance contains a number of provisions that do not comply with applicable law.

Denial of Effective Service Appeal

The Draft Ordinance contains a specific process and standard for determining whether federal preemption exists. Under prevailing law, this constitutes an impermissible burden on federal rights, and should be deleted.

The "Purpose" statement in the Draft Ordinance, Section 230.96(A), states in part that "where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations." Section 230.96(F) then sets forth a special appeal fee and process under which the Applicant may assert federal preemption. This special process includes submission of eight categories of evidence, an unspecified fee (to be established in each case), and the right of the City Attorney "to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicants denial of effective service claims." (See Section F(1)-F(3)).

The ordinance scheme is thus designed to establish an administrative process and special fee for a determination of federal preemption. As such, it contains matters beyond the City's purview under its land use authority and police power, and must be removed because it creates an impermissible burden on federal statutory rights. See *Felder v. Casey*, 487 U.S. 131, 139-144 (1988); *Barry v. Ratelle*, 985 F. Supp. 1235, 1238 (S.D. Cal. 1997); *Hood v. Los Angeles*, 804 F.Supp. 65, 67 (C.D. Cal. 1992).

In addition, from a purely practical standpoint, it is unwise for the City to set forth very specific submission requirements to establish *any* federal right, which, from the preemption standpoint, are subject solely to federal statutory and case law. See 47 U.S.C. Section 332(c)(7). The actual submission requirements set forth in Section 230.96(F)(2) are problematic not only because of the fundamental conflict with preemption principles, but also because they attempt to address technical requirements (transmission levels, call volumes, coverage strength etc.) which are solely within the purview of the federal government. In the 2010 *Clarkstown* decision, the Town's law impermissibly crossed the line between legitimate land use regulation and preempted regulation of technical and operational standards, and the same is currently true under the Draft Ordinance. See *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. N.Y. 2010).

The final submission requirement set forth in Section 230.96(F)(2)(g) states that any proprietary information disclosed to the City "shall remain confidential," but this statement simply would not create any guarantee of confidentiality under the California Public Records Act.

Ricky Ramos, Senior Planner
City of Huntington Beach
September 12, 2011

Page 3

In sum, we do not believe the Denial of Effective Service Appeal process and fee requirements set forth in Section 230.96(F) would survive legal challenge, and ask that the section be deleted.

The Public Right-of-Way, and the Utility Agreement

Section 230.96(E)(1)(g) indicates that the applicant may have to provide a franchise agreement or lease for use of any public property, presumably including the public right-of-way. In order to comply with California Public Utilities Code Section 7901, Section (g) should clarify that a lease is required only for use of City-owned structures within the right-of-way (such as City-owned traffic lights or other poles), but not for use of the right-of-way itself.

Section 230.96(G)(13) states that if a facility requires electrical power, as every facility does, the Applicant must provide either a franchise agreement between the City and the applicant, or a written statement from the utility company "that they accept all responsibility for those lines in the public right-of-way." We are not sure of the genesis of this requirement, but it is doubtful that Southern California Edison ("SCE") makes any separate statement of general liability beyond the statements contained in the SCE franchise agreement with the City. The alternative set forth in (G)(13), namely the requirement of a franchise agreement between the Applicant and the City, would clearly violate *Williams Communications, LLC v. City of Riverside*, 114 Cal.App.4th 642, 648 (2003) and California Public Utilities Code Section 7901. It is well-established that wireless telephone providers are exempt from any local franchise requirements.

Conditional Use Permit, and Open-ended Requirements

The Draft Ordinance expands the categories of site applications that require a Conditional Use Permit ("CUP") – this expansion goes far beyond the City's present regulations, which generally base the need for a CUP on factors such as excess height, visibility and architectural non-integration. In light of the current criteria, we do not believe such an expansion is necessary or warranted.

In addition, while some applications are subject to administrative approval, an application may, *at any stage*, be re-evaluated and placed in the "discretionary" review category. This means that no applicant has any idea which process ultimately will be applied. The California Permit Streamlining Act states that all applicants are to be advised of the application requirements at the outset. *See* Cal. Gov. Code, §§ 65940 – 942. Under the Draft Ordinance there is no certainty in the process.

Section 230.96(E)(1)(i) includes a catch-all provision, requiring the applicant to provide "[a]ny other relevant information as required by the Director of Planning and Building." Taken together, the expansion of CUP requirements, the possibility of re-

ATTACHMENT NO. 7.9

Ricky Ramos, Senior Planner
City of Huntington Beach
September 12, 2011

Page 4

evaluation under a new process at any stage, and an open-ended list of submission requirements introduce a high level of uncertainty and burden upon any carrier attempting to improve wireless infrastructure within the City. We believe the existing Code provisions clearly addressed distinctions in requirements and the necessary level of review, and should not be replaced with a new, very murky process.

Modifications

Section 230.96(B)(6) specifically includes "like-for-like" replacements in the definition of modifications, which as a practical matter may mean that simple equipment replacements may have to undergo a lengthy approval process. We believe any like-for-like replacements should be permitted as of right; there is no legitimate land use rationale for discretionary review in such circumstances, and the City risks intruding on the exclusive federal authority to regulate the technical aspects of wireless services. *See, e.g., Clarkstown, supra.*

Monitoring

Section G(10) is entitled "Monitoring" but requires provision of a lease between a private landlord and the applicant before a building permit will be issued. The only relevant issue is whether the applicant is duly authorized by the underlying property owner to install and maintain a facility in the location subject to land use approval. Provided the application is authorized by the property owner, we do not believe there is justification for requiring any carrier to submit its leases, particularly as leases often contain proprietary or confidential information.

As indicated, this description of problematic provisions is not intended to be exhaustive; we believe the proposed changes raise a number of issues and certainly require examination in light of state and federal law.

We look forward to speaking with you further.

Very truly yours,



Sarah L. Burbidge

Ricky Ramos, Senior Planner
City of Huntington Beach
September 12, 2011

Page 5

cc: (by email only)
Verizon Wireless



September 12, 2011

Ricky Ramos, Senior Planner
City of Huntington Beach
2000 Main St., 4th Floor
Huntington Beach, CA 92648

Re: Zoning Text Amendment No. 09-002 Legislative Draft (August 2011)

Dear Mr. Ramos,

NextG Networks of California (NextG) hereby submits this letter of comment regarding the proposed Zoning Text Amendment No. 09-002, Legislative Draft, (August 2011). While NextG appreciates the opportunity to comment on the City of Huntington Beach's (the "City") proposed language changes to its Wireless Communication Facilities Ordinance ("Ordinance"); NextG believes that the proposed changes are illegal, counter-productive and miss the point of the Ordinances' stated intent. The City should take this opportunity to work co-operatively with the wireless telecommunication industry ("Utilities") and craft an Ordinance that addresses the City's perceived "potential negative aesthetics" impact of Wireless Communications Facilities ("WFC"), while allowing for the smooth deployment of the wireless networks that benefit all of the city constituency.

Ongoing Litigation

NextG notes that it is currently involved in litigation with the City in which NextG has challenged the City's current Wireless Ordinance as unlawful, particularly, in violation of Section 7901 of the Public Utilities Code. NextG submits these comments subject to and without waiving any of the arguments that it has advanced in that litigation. Moreover, to the extent that there are portions of the Wireless Ordinance that would remain unchanged or that are not otherwise addressed in these comments, NextG incorporates its prior comments and briefings setting forth its position regarding how the City's requirements violate Section 7901.

NextG maintains its position that the City's current Ordinance violates Section 7901 of the Public Utilities Code because the City cannot deny NextG access to the public rights of way and the City's current Ordinance seeks to subject NextG's use of the public rights of way to application processes and review that exceed the City's limited authority under Section 7901.1 of the Public Utilities Code. The proposed Ordinance amendment

NextG Networks, Inc.

Los Angeles Office
2125 Wright Avenue, #C-9, La Verne, CA 91750 • Tel 909.593.9700 • Fax 909.593.9774 • www.nextgnetworks.net

ATTACHMENT NO. 7.12

does not remedy the fundamental problem that the Wireless Ordinance would empower the City to deny NextG access to the public rights of way, in violation of the Public Utilities Code. In addition, the proposed Ordinance continues to fail to treat all users of the public rights of way in an equivalent manner, since the City does not impose the CUP requirement on other right of way users. With its legal arguments reserved, NextG provides the following recommendations that may help rectify the legal deficiencies in the proposed Amendment.

Comments

Section A: Purpose. States that wireless facilities have negative aesthetic impacts "including visual blight and diminution of property value." Such claims are unsubstantiated and should be stricken.

Section B: Definitions.

3. The definition of "Completely Stealth" asserts that light standards are to be of a "typical diameter". What does the City consider "typical"? As light pole standards are available in different diameters and this term should be more clearly defined. Also, these poles typically taper, so the diameter changes from top to bottom of the pole. The definition also lacks the mentioning of omni directional antennas, directional panel antennas and cylindrical antennas, which are commonly used in the public right of way.

4. Ground Mounted Facility. The following shall be added to the definition, "Such a facility includes but is not limited to new or existing street light poles, traffic signals or utility poles.

"Street Light Pole" – any concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support.

"Traffic Signal" – shall mean any standard-design concrete, fiber glass, or metal pole that has a mast arm for electrolier support and is used for traffic signal control purposes. Traffic signal may also integrate a streetlight.

"Utility Pole" – any wooden pole that is erected by a utility company.

11. Utility Mounted. The words, "but not traffic signals" should be deleted.

13. Does this definition apply to water districts, police, fire, So Cal Edison, etc?

Section E. Process to Install and Operate Wireless Communication Facilities.

1. The required fees shall be "reasonable".
 - b. The City needs to provide guidelines for satisfying the evidence requirements that a facility is compatible with the surrounding environment.
 - c. The following should be added after "six feet"; "from a public vantage point".
 - f. This requirement shall not apply to wireless facilities in the public right of way.
 - h. Co-locations shall be required where "economically and technically" feasible.
 - i. "Any other relevant information" is vague and overbroad.
2. Director Approval. The City's ability to determine whether a facility may be approved by the Director or whether a CUP is required gives the City broad discretion and provides the applicant with no certainty. The criteria should be spelled out in the process.
 - a. Co-location shall also include co-location on an existing utility pole.
 - b. There is a concern here with the City's inclusion of the words "and is not ground or utility mounted". The City is intentionally calling out for different treatment of ground utility facilities. Why is this?

Section 2 states that the Director shall issue findings of approval. What are these required findings?

Section 3 clearly states that any NEW ground or utility mounted wireless facilities shall obtain a CUP. The City may want to consider administrative review for low visibility sites.

Section 4. Design review shall be required of facilities in the public right of way ONLY if the facilities are within 300 feet of a residential district.

Section F. Applicant May Assert Federal Preemption at Time of Appeal to Planning Commission

1. The City's imposition of a special fee for a appealing a wireless CUP is unreasonable.

2f. The City's request for monthly volume of calls, etc is inappropriate as it requires the disclosure of confidential/proprietary information.

3. The City Attorney's ability to subpoena and compel the production of certain documents relevant to the denial of the applicant's service claims is unprecedented. In my more than 20 years in land use planning, I have never seen an ordinance calling that specifically calls out for the active participation of the City Attorney in the permit process. Clearly, this section illustrates the City's hostility toward the wireless facilities, more specifically those located in the public right of way.

Section G. Wireless Communication Facility Standards

1. Screening. Having the requirement that a ground or utility mounted facility blend into a building or other concealing structure is physically impossible.
10. Monitoring. The entire sentence should be stricken and replaced with the following: "The applicant shall provide the City with the property owner's authorization to locate on his property prior to the issuance of a building permit."
11. Landscaping. What is the relevance of "projected vehicular traffic" to landscaping?

Section K. Cessation of Operation

3b. The costs of removal, repair and restoration shall be reasonable. Thus, the word "entire" shall be replaced with the word "reasonable".

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to call me at (858) 876-2070. NextG looks forward to working with the City to resolve our differences and to providing the public with least obtrusive, most technologically advance wireless networks.

Very truly yours,

NEXTG NETWORKS OF California, INC.



Joe Milone
Director of Government Relations



September 12, 2011

City of Huntington Beach
Department of Planning and Building
2000 Main Street
Huntington Beach, CA 92648

Attention: Mr. Ricky Ramos, Senior Planner

Via E-Mail Delivery Only

RE: City of Huntington Beach Draft Wireless Communication Facilities Ordinance

Dear Mr. Ramos:

The California Wireless Association ("CalWA")¹ writes in response to the City's ongoing discussions concerning the possible amendments proposed to the City's existing Wireless Communication Facilities Ordinance. CalWA appreciates the effort of the City's Planning Division to date however we are opposed to the general tone of the proposed ordinance and particularly its lack of separate and distinct regulations for addressing proposed facilities within the City's public right-of-way, its continued stated intention to discourage facilities within residential areas, and the onerous requirements to "justify" the need for a proposed wireless communication facility.

We present this correspondence and the attached "annotated comments" in support of our positions stated above and sincerely thank the City for this opportunity.

As a precursor to our more substantive comments herein, we are also hopeful that the City of Huntington Beach can appreciate the tremendous pressure the industry is now facing in meeting the future wireless needs of Huntington Beach's citizens, business community, and public safety professionals. Again we are grateful for the opportunity to participate in this discussion, and hope to continue our participation, as the process progresses.

While we believe that the City's Planning Division has conducted a thoughtful examination and review of the matters at issue here, there are several additional issues

¹ CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.

that we believe are important for the City to also understand before providing any further direction on this matter.

Again, in addition to this correspondence, detailed and specific comments on the proposed ordinance are attached that detail issues with the structure and language of the ordinance in its current draft form. This correspondence is presented in an effort to broaden the discussion and present additional issues and values that the subject land use also represents and supports. We respectfully request the Planning Division review these important comments and consider a much more balanced and tolerant view of this land use that by definition in the States constitution is in fact a "Utility".

"CALIFORNIA CONSTITUTION

ARTICLE 12 PUBLIC UTILITIES

SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

The additional "aesthetic" considerations that are the focus/subject of your deliberations will have a significant negative impact on the wireless communications industry and jeopardize achievement by the City of many additional stated City goals, objectives, and policies not considered by the Planning Division to date.

Prior to presenting specific evidence of the City's own recognition of "additional values" to which the subject land use supports, we wish to convey to the Planning Division some basic information that should also be considered in your deliberations, and specifically to the question of "ratcheting up" any "aesthetics" based only regulations to this utility infrastructure.

1. All telecommunications facilities including wireless are defined as a "utility" under state law (see reference to State Constitution above);
 - a. No other utility is required to address "aesthetics" in nearly the same manner that is forced upon the wireless telecommunications industry.
 - b. We all rely on local government to apply regulations on similar land uses equitably and fairly. Please consider this fundamental tenant of government as you deliberate on this matter.
2. President Obama in his recent "State of the Union" address has identified the deployment of broadband wireless infrastructure as an urgent need and immediate priority for this country;

- a. By adding additional regulations and requiring additional discretionary entitlements for the review and processing of those applications that are designed in a manner that is consistent with other similarly placed utilities, the City is behaving inconsistently with the President's directive and as will be presented subsequently, their own (City of Huntington Beach) goals and policies.
- ~~3. The unique technology employed by wireless telecommunications must be considered more prominently in the development of any land use regulations;~~
- a. ~~The application of additional "aesthetically" based regulations can significantly limit the ability of this infrastructure to function properly and to its highest and best use, thereby necessitating many more facilities and adding significantly more cost, which results in additional economic burdens for us all.~~
4. Wireless infrastructure is becoming critical in the provision of public safety and emergency services as well as serving as the new platform of our economy and new ways to manage and provide healthcare.
 - a. Certainly "aesthetics" is part of the equation; however the discussion needs to be more balanced and cannot solely focus on this one element at the expense of the functional requirements of the technology and all other considerations.
 - b. Please consider the broader issues of public safety and emergency services, economic development, and future critical healthcare applications as you continue to deliberate on any land use regulations you may be considering.
 5. The Nation has begun to migrate Public Safety Communications to the frequencies within the more recent release by the FCC of those bands associated with the "Long Term Evolution" (LTE) networks also being deployed by commercial wireless carriers. This was specifically done to allow Public Safety professionals, during times of natural and manmade disasters, with the ability to utilize and "roam" upon these adjacent commercial LTE platforms to ensure that critical communications can be better maintained in these times of significant need.

The following discussions provide numerous examples and "snapshots" of the evidence in support of the various "additional values" that this land use supports as recognized and documented with the City of Huntington Beach's General Plan.

General Plan Land Use Element

Within the City's Land Use Element of its General Plan are obvious references that speak to the importance of this land use and how reasonably and effectively managing it will support the ability of the City of Huntington Beach to meet its stated land use goals.

Below are various Goals, Objectives, and Policies lifted directly from the Land Use Element of the City of Huntington Beach's General Plan.

Correlation of Land Use Development with Market Demands

Goal

LU 1

Achieve development that maintains or improves the City's fiscal viability and reflects economic demands while maintaining and improving the quality of life for the current and future residents of Huntington Beach.

Policies

LU 1.1.1

Establish incentives for the development of uses to support the needs and reflect the economic demands of City residents and visitors. (I-LU 16 and I-LU 17)

LU 1.1.2

Promote development in accordance with the Economic Development Element. (I-LU 17)

Correlation Of Land Use Development with Supporting Public Infrastructure and Services

Goal

LU 2

Ensure that development is adequately served by transportation infrastructure, utility infrastructure, and public services.

Objective

LU 2.1

Review development with the ability of the City and other service providers to provide adequate public infrastructure (transportation facilities, wastewater collection and treatment, water supply, electrical, natural gas, telecommunications, solid waste disposal, storm drainage) and quality public services (governmental, police, fire, recreational, cultural, and public educational system).

Policies

LU 2.1.1

Plan and construct public infrastructure and service improvements as demand necessitates to support the land uses specified in the Land Use Plan (as defined in the Circulation and Public Utilities and Services Elements of the General Plan). (I-LU 9 and I-LU 14)

LU 2.1.2

Require that the type, amount, and location of development be correlated with the provision of adequate supporting infrastructure and services (as defined in the Circulation and Public Utilities and Service Elements. (I-LU 8, I-LU 9, I-LU 11, and I-LU 12)

Objective

LU 4.3

Ensure that property owners and tenants have access to educational programs regarding property maintenance.

LU 4.3.3

Provide economic assistance, as funds are available, for the improvement of physically deteriorated structures in the City. (I-LU 16 and I-LU 22)

The development of a robust and ubiquitous wireless communications network that is not overburdened with costly "aesthetic" regulations and an expensive and time consuming discretionary entitlement process will better serve the goals, policies and objectives of the City articulated above.

General Plan Economic Development Element

Within the City's Economic Development Element are yet additional references that speak to the importance of this land use and how reasonably and effectively managing it will support the ability of the City of Huntington Beach to maintain its prominent position as an economic center and balanced community in the greater Orange County region.

In these difficult economic times the adoption of onerous and burdensome regulations is not conducive to supporting a sustainable economic recovery that we all recognize as critical and important to all our futures. Government needs to consider a more

supportive and partnering role in order to assist one of the few industries that is able to grow itself and at the same time enable and support other industries. Below are various "goals", "objectives", and "policies" lifted from this Element that speak to this land use.

Economic Growth

Goal

ED 1

Provide economic opportunities for present and future Huntington Beach residents and businesses through employment and local fiscal stability.

Policies

ED 1.1.1

Maintain and expand economic and business development programs that encourage and stimulate business opportunities within the City. (I-ED 1, I-ED 2, and I-ED 3)

ED 1.1.2

Review and revise the Economic Development Element every three years to assure the Element: a) adequately assesses Huntington Beach's economic conditions; b) promotes policies and programs to meet the business and resident needs; c) conforms with other General Plan elements; and d) reflects the Economic Development Strategy. (I-ED 1, I-ED 2, and I-ED 3)

Marketing

Objective

ED 2.2

Maximize Huntington Beach's visibility by participating in local, regional and state marketing efforts.

Policies

ED 2.2.1

Work with state, county, and subregional organizations to promote Huntington Beach, Orange County, and California. (I-ED 1 and I-ED 2)

ED 2.2.2

Coordinate with the City, Huntington Beach-Fountain Valley Association of Realtors, Chamber of Commerce, conference and visitor bureau, school districts, and other business organizations to help their promotional information focus on the message that Huntington Beach is a diverse, healthy community within which to do business. (I-ED 1 and I-ED 2)

ED 2.2.3

Promote Huntington Beach businesses to increase their visibility and local patronage. (I-ED 1 and I-ED 2)

ED 2.2.4

Utilize new telecommunications technology, such as HBTv Channel 3, the internet, and Worldwide Web, to promote the City. (I-ED 1 and I-ED 2)

ED 2.4.2

Seek to capture the "new growth" businesses such as, but not limited to:

- a. telecommuting;
- b. "shop for value" or "big box" stores;
- c. entertainment-commercial developments;
- d. knowledge-based retail and entertainment-information retail uses; and
- e. high sales tax producing businesses. (I-ED 1 and I-ED 2)

ED 2.4.3

Encourage the expansion of the range of goods and services provided in Huntington Beach to accommodate the needs of all residents in Huntington Beach and the market area. (I-ED 1 and I-ED 2)

ED 2.5.2

Seek to capture "new growth" industries such as, but not limited to:

- a. "knowledge" based industries, such as research and development firms (higher technology communications and information industries);
- b. communication industry service providers and equipment manufactures which are creating the next series of consumer and utility company equipment and services;
- c. biotechnical industries;
- d. environmental technology; and
- e. point of sale industries. (I-ED 1 and I-ED 2)

The City's wireless network is a critical component to providing "infrastructure" that will support the City's envisioned strong and diversified economy. This additional "value" needs to be added to the conversation and decision making process when addressing this critical infrastructure/land use.

The numerous "goals", "objectives", and "policies" within this Element speak indirectly and directly to the importance of the telecommunications industry and the role it plays in support of City's local economy not to mention the regional economy.

General Plan Public Facilities and Public Services Element

Within this Element of the City's General Plan, "telecommunications" plays an ever critical role in emergency preparedness and emergency services.

PF 2.2.2

Utilize modern equipment and techniques to ensure adequate safety for the citizens of Huntington Beach.
(I-PF 2 and I-PF 8)

Objective

PF 2.4

Increase fire and safety awareness among the public.

I-PF 11

Emergency Response Coordination

Maintain communication with State safety personnel, local school districts, and City Fire and Police divisions to coordinate emergency response efforts.

- h. Continue to coordinate with Federal, State, County, and local safety agencies to facilitate a high level of cooperation in responding to emergencies such as oil spills, search and rescue or swiftwater response.

General Plan Utilities Element

Within this Element of the City's General Plan, again "telecommunications" is cited and it is understood these types of facilities are critical infrastructure for the City of Huntington Beach now and particularly in the future.

**Gas Supply, Telecommunication,
Electricity**

Goal

U 5

Maintain and expand service provision to City of Huntington Beach residences and businesses.

Objective

5.1

Ensure that adequate natural gas, telecommunication and electrical systems are provided.

Policies

U 5.1.1

Continue to work with service providers to maintain current levels of service and facilitate improved levels of service. (I-U 5)

A comprehensive review of all the various elements of the City's General Plan has not been conducted as yet, however it is clear through the few examples cited above there are significant "additional values" that are supported by the continued development of a robust and ubiquitous telecommunications network.

Certainly aesthetics plays a role in the regulation of this land use but to only consider that value in your deliberation and overall decision making process would be a serious misunderstanding of the totality of this lifesaving and critical component to the City's overall future safety, health, and economic vitality.

Again there is much additional evidence that telecommunications will only continue to grow in terms of its importance in the provision of public safety, economic development, traffic demand management, and yet unforeseen but soon to be released e-medical applications. For all these reasons we need to begin to "balance" the total of all the "values" that this land use provides/supports and move away from the singularly "aesthetics" only considerations that have dominated the discussions over recent years. It's now time that the local regulatory environment begin to evolve in recognition of all the values presented herein.

Conclusion

We ask that the City's Planning Division look at the totality of the issues surrounding this critical land use and embrace the "additional values" cited within your City's own General Plan. We also ask that you make the most responsible decision on this matter and represent this land use in a more balanced and accurate light to the decision makers as this project moves forward. As drafted, the proposed ordinance applies a heightened and overly inflated "aesthetic value" not applied to any other like land use (utilities) and in our opinion, is a waste of scarce City resources and an additional burden and cost that would have to be borne by all.

In addition, in my 20 plus years working as a professional public sector planner at jurisdictions throughout the State, when the value of "aesthetics" must be measured against other "values" that include "public safety" and "economic development" the aesthetics considerations are in most (if not all) cases secondary and subjective by a large margin to the protection of the public's safety and economic vitality.

Finally, please carefully review the attached "annotated comments" as there are many additional and significant concerns with the details of the proposed ordinance. Again, as is mentioned in our opening remarks, one area of significant concern to Calwa is the section of the regulations requiring the applicant to "justify" the need for any future facility. This is not asked of any other land use or business and is not under the purview of the local planning and zoning authorities as it is a business decision that must be made by the applicant/private sector, and as such it should be removed in its entirety.

Thank you for taking the time to review our comments. We look forward to participating in this process as it progresses. Please feel free to contact me to discuss the substance of our comments and how we can better support our mutual goals.

Best Regards,

Sean Scully
Board member
Co-Chairman Regulatory Committee
California Wireless Association
800 S. Pacific Coast Hwy #448
Redondo Beach, CA 90277
Office: (310) 378-8706
Mobile: (818) 426-6028

Calwa Comment 1: We encourage the City of Huntington Beach to broaden their position/view on this land use beyond the sole issue of "aesthetics" and recognize the "additional values" that are supported by wireless communications as it addresses and enhances public safety/emergency preparedness services, economic development, traffic demand management (trip reductions), and many other general welfare and quality of life issues.

Calwa Comment 3: Residential areas have increasingly become underserved by existing wireless networks. The original networks were deployed along major travel corridors and then within the commercial and business communities. The traditional business community has now evolved to include our residential neighborhoods with the growth of telecommuting and the "home office". In addition, more residents continue to give up their land lines in favor of wireless communications in an effort to reduce household expenses. It is strongly recommended that there be some recognition of the need for this land use within residential areas as they have now evolved as described. DAS (Distributed Antenna Systems) could be encouraged as an option within these more sensitive areas.

City of Huntington Beach
Zoning Text Amendment No. 09-002
Legislative Draft
(August 2011)

230.96 Wireless Communication Facilities

A. Purpose. This Section of the Zoning Code is to protect public safety, general welfare, and quality of life by regulating the location, height and physical characteristics and provide for orderly and efficient placement of Wireless Communications Facilities in the City of Huntington Beach.

Because of the potential negative aesthetic impacts of Wireless Communications Facilities, including visual blight and diminution of property value, the City endeavors to locate antennas within commercial, industrial and other non-residential zones, screen them from view, and encourage co-location with other Wireless Communication Facilities. However, the Federal Telecommunications Act, specifically 47 U.S.C. Section 332(c)(7), preempts local zoning where a Wireless Facility is necessary to remedy a significant gap in the Wireless Provider's service. Consequently, where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations. A myriad of factors are involved in determining if a gap is significant, such as: whether the gap affects a commuter highway; the nature and character of the area and the number of potential users affected by the alleged lack of service; whether the signal is weak or nonexistent, and whether the gap affects a commercial district. Consequently, the City will require scientific evidence from an expert in the field demonstrating the existence of a significant gap in service, and a lack of feasible alternative sites. The applicant will be required to pay for the cost of said expert opinion.

Calwa Comment 2: We respectfully request evidence in support of the claim that Wireless Communications Facilities has the potential to negatively impact property values. We are aware of studies that confirm there is no such impact and we will share this information.

B. Definitions. For the purpose of this Section, the following definitions for the following terms shall apply: (3568-9/02)

1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a Wireless Communication Facility. (3568-9/02)
2. Co-Location or Co-Located. The location or placement of multiple Wireless Communication Facilities which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
3. Completely Stealth. Any Wireless Communication Facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to, architecturally screened roof mounted antennas, façade mounted antennas treated as architectural elements to blend in with the existing building, church steeples, fire towers, and flag poles and light standards of a typical diameter.

Calwa Comment 4: Calwa strongly recommends that this language be removed. As is clearly articulated the proof of "significant gap" is neither conclusive nor productive and serves to significantly increase expense and delays. Calwa would prefer that the City pursue an approach that would require the carrier meet a higher threshold for aesthetics in these more sensitive areas and not the additional costs and delays in attempting to prove "significant gap". In essence we recommend an "incentivization" by the use of development standards. It must be understood that the wireless industry is not interested in the development of any wireless communication facility if there is not a demonstrated need for said facility.

Calwa Comment 5: A separate and distinct definition should be included for DAS (Distributed Antenna System) and these types of facilities should be provided separate development regulations and administrative process through the Department of Public Works in conjunction with an encroachment permit. Only those facilities that cannot meet reasonable development standards/regulations for facilities within the public right-of-way should be included within the purview of the Planning Department.

4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
 5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
 6. Modified Facility. An existing Wireless Communication Facility where the antennas and/or supporting structure are proposed to be altered in any way from their existing condition, including like-for-like replacement but excluding co-location.
 7. Pre-existing Wireless Facility. Any Wireless Communication Facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted wireless antennas that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
 8. Public Right-of-Way. The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways, private streets with public access easements within the City's boundaries, and City owned properties, as they now exist or hereafter will exist.
 9. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
 10. Stealth Techniques. Any Wireless Communication Facility, including any appurtenances and equipment, which is designed to blend into the surrounding environment. Examples of Stealth Technique include, but are not limited to, monopals/monopines. (3568-9/02)
 11. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational Facility lighting, or any other utility which meets the purpose and intent of this definition. (3568-9/02, 3779-10/07)
 12. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)
 13. Wireless Communication Facility or Facility or Wireless Antenna. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service.
- C. Applicability. This ordinance shall apply to all Wireless Communication Facilities which are erected, located, placed or modified within the City of Huntington Beach.
- D. Exceptions. The following Wireless Communication Facilities shall be exempt from this Ordinance.

Calwa Comment 6: Separate regulations/development standards and a ministerial process should be developed separately for facilities proposed within the public right-of-way.



Calwa Comment 7: This section may be in conflict with Government Code Section 65850.6 Collocation Facilities. Calwa recommends that additional clarifications be made to this section to ensure it's consistency with cited State Law.

1. Any Facility, which is subject to a previously approved and valid entitlement, may be modified within the scope of the applicable permit without complying with these regulations. However, modifications outside the scope of the valid entitlement or any modification to an existing facility that does not have a previously approved and valid entitlement is subject to the requirements of this ordinance.
2. Any antenna structure that is one meter (39.37 inches) or less in diameter that is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof.
3. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna.
4. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot.
5. Any antenna structure used by authorized amateur radio stations licensed by the FCC.

E. Process to Install and Operate Wireless Communication Facilities.

No Facility shall be installed anywhere in the City without first securing either a Wireless Permit or a Conditional Use Permit as required below.

1. Wireless Permit Application. The applicant shall apply to the Planning and Building Department for a Wireless Permit by submitting a completed Wireless Permit Application ("Application") and paying all required fees. The Application shall be in the form approved by the Director, and at a minimum shall provide the following information:
 - a. Precise location of the Facility.
 - b. Evidence that the Facility is compatible with the surrounding environment or that the facility is architecturally integrated into a structure.
 - c. Evidence that the facility is screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).
 - d. Evidence that the massing and location of the proposed facility are consistent with surrounding structures and zoning districts.
 - e. Evidence that no portion of the Facility will encroach over property lines.
 - f. Property owner authorization or evidence of fee ownership of property where the Facility will be installed.

Calwa Comment 8: Additional language should be included here that would exempt a completely stealthed facility from this requirement. In addition, incentives for this being "required" would be greatly enhanced if all collocations were administratively processed. Certainly Government Code Section 65850 should also be cited and this ordinance should be consistent with said State Collocation Laws.

- g. License, lease, franchise, or other similar agreement from the City for any Facility to be placed over, within, on, or beneath City property.
- h. Locations of all other Wireless Antennas within 1,000 feet of the proposed facility. Co-location of Wireless Antennas shall be required where feasible whenever a new Wireless Antenna is proposed within 1,000 feet of any existing Wireless Antenna.
- i. Any other relevant information as required by the Director of Planning and Building.

Calwa Comment 8: The City should strongly consider including DAS facilities in this class of "projects".

The Planning and Building Department will initially review and determine if the Application is complete. The City may deem the Application incomplete and require re-submittal if any of the above information is not provided.

2. Director Approval. Following submittal of a complete Application, the City will determine whether the Facility may be approved by the Director or whether a Conditional Use Permit is required. Wireless Permit applications will be processed based upon the location and type of antennas defined in herein. Although said classifications are assigned at project intake, a re-evaluation of antenna classifications may occur at any point in the process including at the time of review by the Director, Zoning Administrator, Planning Commission or City Council.

Calwa Comment 9: Again, HB should consider some additional height above existing to further incentivize co-locations.

A Facility not subject to any other discretionary approval may be administratively approved by the Director by issuing a Wireless Permit if it is:

- a. Co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights, and employs Stealth Techniques such that the co-located Wireless Facility is compatible with surrounding buildings and land uses; or
- b. A modified Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72 and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
- c. A Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72, is Completely Stealth, and is not ground or utility mounted;

Calwa Comment 10: If the facility is a "Completely Stealth" type facility then whether it is ground or utility mounted should make no difference. The last portion of this sentence should be stricken, "...and is not ground or utility mounted."

The Director may require conditions of approval of the Facility in order to minimize adverse health, safety and welfare impacts to the community.

A decision of the Director to grant a Wireless Permit shall become final ten (10) days following the date of the decision unless an appeal to the Planning Commission is filed as provided in Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

The Director shall issue findings of approval that the Facility meets the above criteria and is not a detriment to the health, safety and welfare of the community.

3. Zoning Administrator Approval. In the event the Director determines that the applicant does not meet the requirements for Director approval of a Wireless Permit, then the applicant shall apply for a Conditional Use Permit (CUP) to the Zoning Administrator pursuant to Chapter 241 of the HBZSO. Notwithstanding any other provisions of the

Calwa Comment 11: Insert the following "...unless located within the public right of way."

HBZSO, any new ground or utility mounted wireless facilities shall be required to obtain a CUP. CUP applications shall also include the same information required under subsection E.1.

The Zoning Administrator may require, as a condition of approval of the CUP that the applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction:

- a. Completely Stealth installations;
- b. Stealth Techniques;
- c. Co-location and locating Facilities within existing building envelopes;
- d. Colorization or landscaping to minimize visual prominence; and/or
- e. Removal or replacement of Facilities that are obsolete.

Calwa Comment 12: How is a facility determined/defined to be "obsolete". Calwa strongly recommend that the City refrain from removing any existing facilities.

Further conditions of approval of a facility CUP may be imposed as provided in Chapter 241 of the HBZSO. The Zoning Administrator's decision may be appealed to the Planning Commission in accordance with Chapter 248 of the HBZSO.

Calwa Comment 13: Calwa strongly recommends that an alternative set of regulations be developed to address in a more efficient and effective manner those facilities that could be located in the "public right-of-way".

- 4. Design Review. Design review shall be required for any Wireless Communication Facilities pursuant to the HBZSO as well as those located on public right-of-way and on or within 300 feet of a residential district or use in the City.

Notwithstanding any other provisions of the HBZSO, design review is not required for Wireless Communication Facilities that may be approved by the Director pursuant to subsection E.2 (Director Approval) above and have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.

F. Applicant May Assert Federal Preemption At Time of Appeal To Planning Commission.

- 1. If the decision on the Wireless Permit or Conditional Use Permit is appealed (either by applicant or an aggrieved party) to the Planning Commission, the Applicant may assert that Federal Law preempts the City from denying the application because denial would effectively prohibit Wireless Service. The applicant shall pay a Denial of Effective Service appeal fee in an amount to be established by City Council Resolution, which amount shall be the estimated cost for the City to retain an independent, qualified consultant to evaluate any technical aspect of a proposed Wireless Communications Facility, including, but not limited to, issues involving whether a significant gap in coverage exists. A Denial of Effective Service appeal must be submitted prior to the expiration of the appeal period for a Wireless Permit or Conditional Use Permit.
- 2. The Director shall establish the form of the Denial of Effective Service appeal. At a minimum, the Applicant shall provide the following information as part of its appeal:

In order to prevail in establishing a significant gap in coverage claim the applicant shall establish at minimum the following based upon substantial evidence:

- a. Evidence demonstrating the existence and nature of a significant gap in service in the vicinity of the proposed Facility, including but not limited to whether the gap

Calwa Comment 15: Need input
from legal professional as to
City's ability to require this?

pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.

- b. Evidence demonstrating that the applicant has pursued other feasible sites for locating the Facility, but that they are unavailable on commercially practicable terms.
- c. Evidence demonstrating the radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region, and for the City of Huntington Beach.
- d. Radio frequency propagation maps demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- e. Radio frequency drive tests demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- f. Reports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed Facility.
- g. Any proprietary information disclosed to the city or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law. In the event the applicant does not provide this information, the City may conclusively presume that no denial of effective service exists.

All of the information noted above shall be submitted to the City within 30 days of the filing of the Denial of Effective Service appeal unless an extension is granted by the Director.

3. The Denial of Effective Service appeal shall be considered concurrently with the Wireless Permit or CUP appeal hearing before the Planning Commission. Prior to the scheduling of the public hearing on the Wireless Permit or CUP appeal, the City Attorney shall be authorized to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicant's denial of effective service claims.

G. Wireless Communication Facility Standards. The following standards shall apply to all wireless communication facilities: (3779-10/07)

1. Screening. All screening used in conjunction with a wall or roof mounted Wireless Antenna shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground or utility mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
2. Equipment/Accessory Structures. All equipment associated with the operation of the Wireless Antenna, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located and Section 230.76. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by

Calwa Comment 16: Again additional language should be included here that would exempt a completely stealthed facility from this requirement. In addition, incentives for this being "required" would be greatly enhanced if all collocations were administratively processed. Certainly Government Code Section 65350 should also be cited and this ordinance should be consistent with said State Collocation Laws.

duplicating materials and design in a manner as practical as possible. Chain link fencing and barbed wire are prohibited. (3568-9/02)

3. General Provisions. All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)
4. Building Codes: To ensure the structural integrity of Wireless Communication Facilities, the owners of a Facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)
5. Co-Location: Co-location of ground mounted Wireless Antennas shall be required where feasible whenever a new Wireless Antenna is proposed within 1000 feet of any existing Wireless Antenna.
6. Federal and State Requirements: All Wireless Communication Facilities must meet or exceed current federal and state laws, standards and regulations of the FCC, and any other agency of the federal or state government with the authority to regulate Wireless Communication Facilities. (3568-9/02)
7. Interference: To eliminate interference, at all times other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any Wireless Antenna causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)
8. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)
9. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the Wireless Antenna. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)
10. Monitoring: The applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit.
11. Signs: The Wireless Antenna shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage. (3568-9/02, 3779-10/07)
12. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed Wireless Antenna. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning and Building Departments may be required. (3779-10/07)
13. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate

Calwa Comment 17: What is the purpose of this requirement? Calwa strongly recommends that this requirement be stricken as it is "irrelevant" to the City's purview.

Calwa Comment 19:
Calwa strongly recommends that an alternative set of regulations be developed to address in a more efficient and effective manner those facilities that could be located in the "public right-of-way".

Calwa Comment 18: Need input from legal professional as to City's ability to require this?

Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07)

- H. Facilities on Public Property. Any Wireless Communication Facility to be placed over, within, on, or beneath City property shall obtain a license, lease, franchise, or other similar agreement from the City prior to issuance of a Wireless Permit or Conditional Use Permit. (3779-10/07)
- I. Facilities in the Public Right-of-Way. Any Wireless Communication Facility to be placed over, within, on or beneath the public right-of-way shall obtain an encroachment permit from the Department of Public Works and comply with the Undergrounding Ordinance (Chapter 17.64 of HBMC). (3568-9/02, 3779-10/07)
- J. Facility Removal. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)
- K. Cessation of Operation.
1. Abandonment. Within thirty (30) calendar days of cessation of operations of any Wireless Communication Facility approved under this Section, the operator shall notify the Director in writing. The Wireless Antenna shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)
 - a. The City has determined that the operator has resumed operation of the Wireless Communication Facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)
 - b. The City has received written notification of a transfer of the Wireless Communication Facility. (3568-9/02, 3779-10/07)
 2. City Initiated Abandonment: A Wireless Antenna that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the Wireless Antenna and the owner(s) of the premises upon which the antenna is located. Such notice may be delivered in person, or mailed to the address(es) stated on the permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)
 3. Removal of Abandoned Wireless Antenna: The operator of the Wireless Antenna and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the Wireless Antenna in its entirety and restore the premises, or (2) provide the Director with written objection to the City's determination of abandonment. (3779-10/07)
 - a. Any such objection shall include evidence that the Wireless Antenna was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the Facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

Calwa Comment 20: The process for remediation of abandoned facilities should follow whatever processes currently exists and is followed/practiced by the City. If this is the existing policy Calwa has no issues with this process. If this is alternative to current policy for other abandoned private land uses/facilities then Calwa requests that it be removed and replaced with the same language that constitutes the current policies/regulations.

- ↙
- b. At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned Wireless Antenna and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed Antenna (or any part thereof). The owner of the premises upon which the abandoned Antenna was located, and all prior operators of the Antenna, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed Wireless Antenna, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

DRAFT