City of Thousand Oaks

Community Development Department
STAFF REPORT

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TO: Andrew P. Powers, City Manager

FROM: Mark A. Towne, Community Development Director

DATE: March 5, 2019

SUBJECT: **Urgency Ordinance and Resolution Amending Regulations and Policies Related to Wireless Communications Facilities and Resolution Initiating Amendments to Regulations and Policies Concerning Wireless Communications Facilities (MCA 2018-70719)**

RECOMMENDATION:

1. Read ordinance in title only, further reading be waived, and adopt urgency ordinance regulating wireless communications facilities;

2. Adopt resolution amending policies related to wireless communications facilities; and

3. Adopt resolution initiating amendments to Thousand Oaks Municipal Code and resolutions concerning wireless communications facilities.

FINANCIAL IMPACT:

No Additional Funding Requested. Costs include staff time, printing, and publication costs, and the cost of wireless consulting services related to processing this amendment, which are included in the Adopted 2018-19 General Fund Budget.

BACKGROUND:

Existing Wireless Network

There are approximately 140 wireless facilities in Thousand Oaks. Most of these are operated by AT&T, Sprint, T-Mobile, or Verizon.

These facilities are located throughout the City, and in a variety of sizes and designs. Smaller facilities typically include antennas located within a cylindrical “radome” that is mounted on a replacement (and slightly wider) light pole. Larger arrays of antennas are commonly located on electrical transmission poles or lattice towers. Other wireless facility locations include, but are not limited to, sports field

light poles, traffic signal poles, and commercial, industrial, and institutional buildings. Related equipment is usually located in an underground vault, with only vents and meter pedestals visible above ground.

City Resolution No. 97-197

The primary tool for evaluating proposed wireless facilities in Thousand Oaks has been Resolution No. 97-197, which was adopted by City Council on October 7, 1997. This policy defined development standards and the permitting process for wireless facilities and is still applicable to proposed large facilities. In reviewing such facilities, staff and the City's wireless consultant have focused on facility location and design to minimize potentially adverse aesthetic impacts, and on technical compliance with Federal Communications Commission (FCC) standards.

Per the Thousand Oaks Municipal Code and Resolution No. 97-197, the permit type for a typical wireless facility project depends on the proposed improvements, underlying zone and proximity to residentially-zoned property, and may include a Development Permit, Special Use Permit, or Minor/Major Modification to a pre-existing permit. Wireless facilities that fall under this policy are processed either by staff or by the Planning Commission through the applicable permit and with public notice. Such decisions are appealable to the Planning Commission or City Council, respectively. Very minor changes to existing facilities are processed through a Design Review application, which is ministerial and therefore does not require public notice, similar to building permits. Processing times for such facilities are governed by the FCC's 2009 Declaratory Ruling and include 90 days for facilities on existing structures, and 150 days for facilities on new structures. This timeframe is measured from application submittal to City action on the application, excluding any time for the applicant to provide necessary information.

Section 6409(a) Eligible Facilities

In 2012, the FCC mandated streamlined procedures for certain modifications of existing facilities, which are contained in Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012. These rules apply to requests to modify existing wireless towers or other wireless support structures that do not "substantially change" the physical dimensions of such towers or structures. The FCC defined "substantial change" in terms of height, width, number of equipment cabinets, concealment elements, excavation/deployment beyond the site, or conditions associated with the original approval of the support structure.

This legislation also stipulated short timeframes for processing of wireless facilities ("shot clocks"), specifically 60 days from a complete application to issuance of building permits for changes to facilities on existing structures. Due to the short

period required to process such applications, applicants must submit construction drawings with their application at a scheduled appointment with staff, and applications are processed in a manner that is comparable to the City's Design Review process. Public notice is not provided for such applications, and decisions for such applications, and decisions made by staff are not appealable. This approach ensures that Section 6409(a) applications are processed within the FCC-mandated time frame of 60 days.

FCC Rule 18-133

On October 15, 2018, the FCC published Rule 18-133 in the Federal Register. The purpose of this rule was to streamline State and local review of wireless facility applications, in order to facilitate the deployment of "small wireless facilities" capable of faster speeds and faster data transfer. Most of the new rules went into effect on January 14, 2019. Rules related to aesthetic matters go into effect on April 12, 2019.

This next-generation technology is commonly referred to as "5G," and has applications to services such as video streaming, in-home internet service and self-driving cars. Such wireless facilities provide coverage over smaller areas (approximately a 300- to 500-foot radius) than macro sites and therefore will likely require the deployment of many such facilities throughout the City.

The FCC's perspective on this new technology and law is reflected, in part, in the FCC's introduction to the Declaratory Ruling on Rule 18-133 (Attachment #1). An FCC fact sheet on the new rules is included in Attachment #2, and specific regulations related to facility size and design are included in Attachments #3 and #4. For reference, Resolution No. 97-197 is included as Attachment #5. Rule 18-133 therefore creates a third set of standards for "small wireless facilities," which would augment Resolution No. 97-197 and Section 6409(a) standards.

Rule 18-133 and prior laws and regulations constrain the ability of local authorities to regulate many aspects of wireless facilities. For example, cities and counties cannot:

- Deny wireless facility applications based on health effects of radiofrequency emissions as long as it complies with FCC limits
- Prohibit wireless facilities within public rights-of-way
- Adopt regulations that have the effect of prohibiting wireless services
- Disregard mandated time limits for acting on wireless applications
- Charge excessive application processing and right-of-way access fees

- Impose unpublished or subjective aesthetic requirements
- Refuse to accept batched applications for multiple facilities

Legal challenges to the recent FCC ruling have been raised by some jurisdictions, but the new rules are in effect while these challenges are pending.

Urgency Ordinance

Due to the immediate impact that the FCC ruling could have on public rights-of-way and public health, safety and welfare, staff is proposing new wireless regulations through an urgency ordinance and corresponding resolution. These changes are necessary to protect the City, to the extent permitted by law, from: a) visual blight created by wireless facilities, b) impacts of wireless facilities on public rights-of-way, c) impacts to public infrastructure, and d) impacts to private property. Under California Government Code Section 36937, an urgency ordinance needs to be passed with a 4/5ths vote. Urgency ordinances go into effect immediately upon adoption.

Resolution

Staff proposes a new resolution that addresses both Section 6409(a) facilities and the new small wireless facility regulations. This would allow wireless policies to be modified more quickly in the future, as compared to policies that are part of the City's municipal code. The City has used a similar ordinance/resolution approach with regard to other policies in the past, such as architectural design review.

The urgency ordinance and policies will be consistent with the new mandated time periods for City review of small wireless facility applications, while preserving the City's land use authority to the maximum extent possible.

Regular Ordinance

Although the urgency ordinance goes into effect immediately, staff still recommends that a corresponding regular ordinance and corresponding resolution be adopted through the standard process. This involves: a) City initiation of a Municipal Code Amendment (MCA), which is proposed as part of this report, b) Planning Commission review and recommendation, and c) final action on the MCA by City Council.

Consultant Input

Telecom Law Firm assisted staff in evaluating Rule 18-133 and developing draft changes to the City's wireless regulations. The firm has in-depth legal and

technological expertise in the field of wireless communications and has served as the City's consultant on wireless facility proposals in the past.

DISCUSSION/ANALYSIS:

Location

Rule 18-133 allows small wireless facilities within public rights-of-way and on private property. Staff expects new facility proposals to primarily be in road rights-of-way because they will probably be faster to process and less expensive for the applicant than placing such facilities on private property.

Size Standards

Under Rule 18-133, "small wireless facilities" are defined as follows:

1. Antennas:
   a) Maximum 3 cubic feet for each antenna.
   b) There is no limit on the number of antennas at a facility.

2. Equipment:
   a) Maximum 28 cubic feet in volume in aggregate.

3. Height:
   a) Mounted on structures that are 50 feet or less in height including their antennas; or
   b) Are mounted on structures no more than 10 percent taller than adjacent structures; or
   c) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

For comparative purposes, a typical street light pole is approximately 30 feet in height, and a cylindrical radome that houses three antennas is approximately 5- to 6-feet in height and about nine cubic feet in volume. Such radomes are normally located on top of a replacement street light pole, so that the overall height of such a facility is approximately 35-36 feet. A diagram of a light pole with a radome that was installed at Conejo Community Park (1175 Hendrix Avenue) is included in Attachment #6 for reference purposes.

Shot Clock

Rule 18-133 requires that "small wireless facilities" applications be processed within 60 days if the facility is located on an existing structure, and within 90 days if located on a new structure. It is important to note that these time frames are from permit application to issuance of building permits. Failure to meet the shot clock constitutes a "presumptive prohibition" on the provision of wireless services by the local agency and would allow an applicant to seek expedited relief from a court.

The ruling provides some flexibility to account for exceptional circumstances. For example, a jurisdiction may rebut the presumption of the reasonableness of the shot clock if a batched application causes a legitimate overload of the locality's resources that are available to process the applications. In addition, the shot clock can be paused if a wireless application is determined to be incomplete.

Shot clocks for all wireless facility types are shown in the following table:

Table 1: Federally-mandated processing times for wireless facilities

Facility Type	Shot Clock (# of days)	
	On Existing Structure	On New Structure
Small wireless facilities[1]	60	90
Section 6409(a) eligible facilities[2]	60	*not applicable*
Other wireless facilities[3]	90	150

[1] Per FCC Rule 18-133 (2018).

[2] Per Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

[3] Per FCC 2009 Declaratory Ruling.

The new rules therefore create a very short timeframe for review of a "small wireless facility" proposal, whether it is on an existing or new structure. Typical steps in the review of a new wireless facility that would require Planning Commission review are described below, assuming the decision is not appealed to City Council, which would add additional steps to this process.

1. Application submittal
2. Review for application completeness (30-day maximum)
3. Case review (on-going)
4. Notice of Application preparation (approximately 7 days)
5. Notice of Application public review period (45-day minimum)
6. Staff report preparation (approximately 7 days)
7. Hearing Notice preparation (approximately 7 days)
8. Hearing Notice public review period (14-day minimum)
9. Public hearing

10. Appeal period (10-day)
11. Building plan preparation by applicant
12. Building plan submittal
13. Building plan check by City (approximately 14 days)
14. Building plan corrections if needed
15. Building permit issuance

The shorter time periods mandated by FCC Rule 18-133 make it realistically impossible to go through a standard planning process, such as the one outlined above, for a proposed wireless facility.

Fees

The FCC ruling also includes guidance related to application processing and rights-of-way access fees. It presumes that an application processing fee of $500 is reasonable for applications involving up to five wireless facilities, and up to $1,000 for a new pole. It also limits any recurring rights-of-way access fee for a small wireless facility to $270 per year. A local government can charge higher fees if it demonstrates that its costs are higher and that its costs are reasonable.

Limits on Aesthetic Requirements

The FCC ruling allows jurisdictions to apply aesthetic requirements if they are:

1. Reasonable;
2. No more burdensome than those applied to other utilities; and
3. Objective and published in advance.

Jurisdictions have 180 days from October 15, 2018 (April 12, 2019) to publish aesthetic requirements that comply with the FCC ruling. The City's current aesthetic requirements, as outlined in Resolution No. 97-197, will need to be modified for small wireless facilities, to the extent that they conflict with the FCC ruling. An application for a small wireless facility cannot be denied if it complies with the City's objective standards.

Proposed Review Process for Small Wireless Facilities

Permit Type

Staff proposes a new permit type that would be specifically designed for small wireless facilities that are governed by FCC Rule 18-133. This will augment the existing application types for Section 6409(a) type facilities, and to proposals that

do not meet either small wireless facility or Section 6409(a) standards (typically larger wireless facilities).

Approval Authority

Staff proposes that the City Engineer or their designee will have approval authority over wireless applications within public rights-of-way. This is appropriate because the Public Works Department manages public and private infrastructure within rights-of-way. The Community Development Director or their designee would have approval authority over applications outside of public rights-of-way.

Permit Process

Due to the very short timeframes imposed by the FCC, staff recommends that "small wireless facility" applications be reviewed through a process, that is comparable to how staff has been evaluating Section 6409(a) type facilities since 2012. Public notices would not be provided through the process, and public hearings would not be held. Staff's responsibility would be to compare the proposed design to the quantitative standards articulated by the FCC, such as a maximum volume of three cubic feet per antenna. As noted above under "Shot Clock," it is not feasible to follow a typical review process and meet FCC's new shot clocks for small wireless facilities.

Preferred Locations and Structures; Prohibited Structures

Staff recommends that a hierarchy of potential wireless facility locations and structures be established, from most to least preferred. Wireless facilities would be prohibited on certain structures in the public right-of-way. This approach authorizes denial of an application for a facility anywhere other than the most preferred location, or the most preferred structure within 500 feet of the applicant's proposed location, unless the applicant shows through clear and convincing written evidence why a preferred location or structure is not technically feasible.

Locational preferences, from most to least preferred, are:

1. Non-residential zones and specific plan designations;
2. 250 feet or more from any structure approved for residential use;
3. Less than 250 feet from a residential structure. If within 250 feet of a residential structure, the wireless facility shall be as far as possible from residential structures.

Structural preferences, from most to least preferred, are:

1. A replacement streetlight pole;
2. A new streetlight pole;
3. A new or replacement traffic signal pole;
4. A new non-replacement pole; and
5. An existing or replacement wood utility pole.

Prohibited structures include decorative poles, signs, utility poles scheduled for removal or relocation within 12 months, and new, non-replacement wood poles.

Design Guidelines for Small Wireless Facilities

A primary method for addressing the short time for the City review of a small wireless facility application is to adopt policies that set forth objective design guidelines that can be followed by an applicant seeking a City permit. The resolution in Attachment #9 contains policies for both small wireless facilities and Section 6409(a) facilities.

Design guidelines for small wireless facilities within public rights-of-way include concepts such as:

1. Replacement streetlights
   a) Installing, where possible, facilities on replacement streetlights modified to mimic the look of existing streetlights.
   b) Concealing antennas in radio frequency transparent cylindrical shrouds or radomes at the top of the poles.
   c) Concealing wires and cables inside the radomes and poles.
   d) Placing accessory equipment underground.

2. New non-replacement poles
   a) Concealing antennas in radomes above new streetlight poles similar to existing streetlight poles.
   b) If there are no existing streetlights in the vicinity, concealing antennas in radomes above new metal or composite poles.
   c) Concealing wires and accessory equipment within the poles or enclosures at the base of the poles.
   d) Placing accessory equipment underground.

3. Wood utility poles
   a) Concealing antennas in radomes above the poles where technically feasible and, if not feasible, concealing antennas in radomes on side-mounted brackets.

b) Concealing wires, cables, and connectors inside radomes, side-mounted brackets and conduit that is flush-mounted to the pole.
c) Matching the brackets and conduit to the color of the pole.
d) Placing accessory equipment underground.

Prototypical Design

In response to the FCC's direction to provide objective design standards, staff developed a prototypical design for a small wireless facility involving a radome on a replacement street light (Attachment #7). This design would accommodate three panel antennas, and is comparable to built examples from Thousand Oaks (Attachment #6). Additional prototypical designs may be developed as part of the standard ordinance that will be reviewed by the Planning Commission and returned to City Council for final action.

Standard Conditions of Approval

These are included in the draft resolution for both small wireless facilities and Section 6409(a) proposals and provide applicants with advance notice of City policies and procedural requirements.

Ordinance and Resolutions

The urgency ordinance for small wireless facilities is included in Attachment #8. The resolution with proposed City policies for small wireless facilities and Section 6409(a) facilities is included as Attachment #9. The resolution initiating the regular ordinance is included as Attachment #10.

COUNCIL GOAL COMPLIANCE:

Meets City Council Goals B and E:

B. Operate City government in a fiscally and managerially responsible and prudent manner to ensure that the City of Thousand Oaks remains one of California's most desirable places to live, work, visit, recreate, and raise a family.

E. Provide and enhance essential infrastructure to ensure that the goals and policies of the Thousand Oaks General Plan are carried out and the City retains its role and reputation as a leader in protecting the environment and preserving limited natural resources.

PREPARED BY: Jeffrey Specter, Senior Planner

Attachments:

Attachment #1 – Introduction to FCC Declaratory Ruling on Rule 18-133
Attachment #2 – FCC Fact Sheet dated September 5, 2018
Attachment #3 – Section U of FCC Rule 18-133: State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities
Attachment #4 – Aesthetic Standards for FCC Rule 18-133: Federal Register Vol. 83, No. 199, Section 29.
Attachment #5 – City Council Resolution No. 97-197 Establishing Standards and Guidelines for Wireless Communications Facilities in Thousand Oaks
Attachment #6 – Example of a light pole with radome from Conejo Community Park (1575 Hendrix Avenue).
Attachment #7 – Prototypical design for small wireless facility on a replacement street light pole
Attachment #8 – Urgency Ordinance
Attachment #9 – Policy Resolution
Attachment #10 – Resolution initiating regular Ordinance

cdd:660.21/Staff Report-City Council/pz (FILE ID: MCA 2018-70719)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

DECLARATORY RULING AND THIRD REPORT AND ORDER

Adopted: September 26, 2018 **Released: September 27, 2018**

By the Commission: Chairman Pai and Commissioners O'Rielly and Carr issuing separate statements; Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today's action is the next step in the FCC's ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

2. Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest $275 billion[1] over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation's GDP by half a trillion dollars.[2] Moving quickly to enable this transition is important, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional $100 billion to the U.S. economy.[3] Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable.

3. The challenge for policymakers is that the deployment of these new networks will look different than the 3G and 4G deployments of the past. Over the last few years, providers have been increasingly looking to densify their networks with new small cell deployments that have antennas often no larger than a small backpack. From a regulatory perspective, these raise different issues than the construction of large, 200-foot towers that marked the 3G and 4G deployments of the past. Indeed, estimates predict that upwards of 80 percent of all new deployments will be small cells going forward.[4] To support advanced 4G or 5G offerings, providers must build out small cells at a faster pace and at a far greater density of deployment than before.

4. To date, regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G. The FCC has lifted some of those barriers, including our decision in March 2018, which excluded small cells from some of the federal review procedures designed for those larger, 200-foot towers. But as the record here shows, the FCC must continue to act in partnership with our state and local leaders that are adopting forward leaning policies.

5. Many states and localities have acted to update and modernize their approaches to small cell deployments. They are working to promote deployment and balance the needs of their communities. At the same time, the record shows that problems remain. In fact, many state and local officials have urged the FCC to continue our efforts in this proceeding and adopt additional reforms. Indeed, we have

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[1] *See* Accenture Strategy, Accelerating Future Economic Value from the Wireless Industry at 2 (2018) (Accelerating Future Economic Value Report), https://www.ctia.org/news/accelerating-future-economic-value-from-the-wireless-industry, attached to Letter from Scott K. Bergmann, Senior Vice Pres., Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 19, 2018).

[2] *See* Accenture Strategy, Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities, (2017) http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrantsmart-cities-accenture.pdf; attached to Letter from Scott Bergmann, Vice Pres. Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-421, (filed Jan. 13, 2017).

[3] Accelerating Future Economic Value Report at 2.

[4] Letter from John T. Scott, Counsel for Mobilitie, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed Sept. 12, 2018).

heard from a number of local officials that the excessive fees or other costs associated with deploying small scale wireless infrastructure in large or otherwise "must serve" cities are materially inhibiting the buildout of wireless services in their own communities.

6. We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services. In reaching our decision today, we have benefited from the input provided by a range of stakeholders, including state and local elected officials.[5] FCC leadership spent substantial time over the course of this proceeding meeting directly with local elected officials in their jurisdictions. In light of those discussions and our consideration of the record here, we reach a decision today that does not preempt nearly any of the provisions passed in recent state-level small cell bills. We have reached a balanced, commonsense approach, rather than adopting a one-size-fits-all regime. This ensures that state and local elected officials will continue to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities.

7. Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches.[6] We have carefully considered these views, but nevertheless find our actions here necessary and fully supported. By building on state and local ideas, today's action boosts the United States' standing in the race to 5G. According to a study submitted by Corning, our action would eliminate around $2 billion in unnecessary costs, which would stimulate around $2.4 billion of additional buildouts.[7] And that study shows that such new service would be

[5] *See, e.g.*, Letter from Brian D. Hill, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 31, 2018) ("While the FCC and the Ohio Legislature have worked to reduce the timeline for 5G deployment, the same cannot be said for all local and state governments. Regulations written in a different era continue to dictate the regulatory process for 5G infrastructure"); Letter from Maureen Davey, Commissioner, Stillwater County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) ("[T]he Commission's actions to lower regulatory barriers can enable more capital spending to flow to areas like ours. Reducing fees and shortening review times in urban areas, thereby lowering the cost of deployment in such areas, can promote speedier deployment across all of America."); Letter from Board of County Commissioners, Yellowstone County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 21, 2018) ("Reducing these regulatory barriers by setting guidelines on fees, siting requirements and review timeframes, will promote investment including rural areas like ours."); Letter from Board of Commissioners, Harney County, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 5, 2018) ("By taking action to speed and reduce the costs of deployment across the country, and create a more uniform regulatory framework, the Commission will lower the cost of deployment, enabling more investment in both urban and rural communities."); Letter from Niraj J. Antani, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 4, 2018) ("[T]o truly expedite the small cell deployment process, broader government action is needed on more than just the state level."); Letter from Michael C. Taylor, Mayor, City of Sterling Heights, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 30, 2018) ("[T]here are significant, tangible benefits to having a nation-wide rule that promotes the deployment of next-generation wireless access without concern that excessive regulation or small cell siting fees slows down the process.").

[6] *See, e.g.*, Letter from Linda Morse, Mayor, City of Manhattan, KS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 13, 2018) (City of Manhattan, KS Sept. 13, 2018 *Ex Parte* Letter); Letter from Ronny Berdugo, Legislative Representative, League of California Cities to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter); Letter from Damon Connolly, Marin County Board of Supervisors to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 17, 2018) (Damon Connolly Sept. 17, 2018 *Ex Parte* Letter).

[7] *See* Letter from Thomas J. Navin, Counsel to Corning, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1, Attach. A at 2-3 (filed Sept. 5, 2018) (Corning Sept. 5, 2018 *Ex Parte* Letter).

deployed where it is needed most: 97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide.[8]

8. The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable. As detailed in the sections that follow, we do so by taking the following steps.

9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.[9] Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.

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[8] *Id.*

[9] "Small Wireless Facilities," as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

13. Next, we issue a Report and Order that addresses the "shot clocks" governing the review of wireless infrastructure deployments. We take three main steps in this regard. First, we create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities. In particular, we read Sections 253 and 332 as allowing 60 days for reviewing the application for attachment of a Small Wireless Facility using an existing structure and 90 days for the review of an application for attachment of a small wireless facility using a new structure. Second, while we do not adopt a "deemed granted" remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a "failure to act" within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases. Third, we clarify a number of issues that are relevant to all of the FCC's shot clocks, including the types of authorizations subject to these time periods.

II. BACKGROUND

A. Legal Background

14. In the Telecommunications Act of 1996 (the 1996 Act), Congress enacted sweeping new provisions intended to facilitate the deployment of telecommunications infrastructure. As U.S. Courts of Appeals have stated, "[t]he [1996] Act 'represents a dramatic shift in the nature of telecommunications regulation.'"[10] The Senate floor manager, Senator Larry Pressler, stated that "[t]his is the most comprehensive deregulation of the telecommunications industry in history."[11] Indeed, the purpose of the 1996 Act is to "provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition."[12] The conference report on the 1996 Act similarly indicates that Congress "intended to remove all barriers to entry in the provision of telecommunications services."[13] The 1996 Act thus makes clear Congress's commitment to a competitive telecommunications marketplace unhindered by unnecessary regulations, explicitly directing the FCC to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[14]

15. Several provisions of the 1996 Act speak directly to Congress's determination that certain state and local regulations are unlawful. Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[15] Courts have observed that Section 253 represents a "broad preemption of laws that inhibit competition."[16]

16. The Commission has issued several rulings interpreting and providing guidance regarding the language Congress used in Section 253. For instance, in the 1997 *California Payphone* decision, the Commission, under the leadership of then Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it

[10] *Sprint Telephony PCS LP v. County of San Diego*, 543 F.3d 571, 575 (9th Cir. 2008) (en banc) (*County of San Diego*) (quoting *Cablevision of Boston, Inc. v. Pub. Improvement Comm'n*, 184 F.3d 88, 97 (1st Cir. 1999)).

[11] 141 Cong. Rec. S8197 (daily ed. June 12, 1995).

[12] H.R. Conf. Rep. No. 104–458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. (100 Stat. 5) 124.

[13] S. Rep. No. 104-230, at 126 (1996) (Conf. Rep.).

[14] Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999) (noting that the 1996 Act "fundamentally restructures local telephone markets" to facilitate market entry); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-58 (1997) ("The Telecommunications Act was an unusually important legislative enactment . . . designed to promote competition.").

[15] 47 U.S.C. § 253(a).

[16] *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999).

ATTACHMENT #2

September 5, 2018

FCC FACT SHEET[1]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment
Declaratory Ruling and Third Report and Order
WT Docket No. 17-79; WC Docket No. 17-84

Background: To meet rapidly increasing demand for wireless services and prepare our national infrastructure for 5G, providers must deploy infrastructure at significantly more locations using new, small cell facilities. Building upon streamlining actions already taken by state and local governments, this *Declaratory Ruling and Third Report and Order* is part of a national strategy to promote the timely buildout of this new infrastructure across the country by eliminating regulatory impediments that unnecessarily add delays and costs to bringing advanced wireless services to the public.

What the Declaratory Ruling and Third Report and Order Would Do:

- Clarify the scope and meaning of the effective prohibition standard set forth in Sections 253 and 332(c)(7) of the Communications Act as they apply to state and local regulation of wireless infrastructure deployment.
- Conclude that Sections 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of their costs for processing applications and for managing deployments in the rights-of-way.
- Identify specific fee levels for small wireless facility deployments that presumably comply with the relevant standard.
- Provide guidance on certain state and local non-fee requirements, including aesthetic and undergrounding requirements.
- Establish two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds) and codify the existing 90 and 150 day shot clocks for non-small wireless facility deployments that were established in the *2009 Declaratory Ruling*.
- Make clear that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks.
- Conclude that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services. Accordingly, we would expect local governments to provide all required authorizations without further delay.

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[1] This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WT Docket No. 17-79 and WC Docket No. 17-84, which may be accessed via the Electronic Comment Filing System (https://www.fcc.gov/ecfs/). Before filing, participants should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq*.

APPENDIX A

Final Rules

Streamlining State and Local Review of Wireless Facility Siting Applications

Part 1—Practice and Procedure

1. Add subpart U to Part 1 of Title 47 to read as follows:

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

§ 1.6001 Purpose.

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with section 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this title.

(c) *Antenna equipment*, consistent with section 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with section 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, Appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure, and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of "collocation" in paragraph (b)(2) of section 1.6100 applies to the term as used in that section.

(h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities*, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in Part 1 of Title 47 and the Communications Act of 1934, 47 U.S.C. 151 *et seq.*

§ 1.6003 Reasonable periods of time to act on siting applications

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) the number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section, plus

(2) the number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time.*

(1) The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth below:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.*

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (c)(2)(ii).

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

(1) *For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information,* the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) *For all other initial applications,* the tolling period shall be the number of days from –

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day after the date when the application was submitted; or

(3) *For resubmitted applications following a notice of deficiency*, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or paragraph (d)(2) of this section, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or paragraph (d)(2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a "holiday" as defined in section 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in section 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

3. Redesignate § 1.40001 as § 1.6100, remove and reserve paragraph (a) of newly redesignated § 1.6100, and revise paragraph (b)(7)(vi) of newly redesignated § 1.6100 by changing "1.40001(b)(7)(i)(iv)" to "1.6100(b)(7)(i)-(iv)."

4. Remove subpart CC.

respect to one-time fees generally, and recurring fees for deployments in the ROW. Following suggestions for the Commission to "establish a presumptively reasonable 'safe harbor' for certain ROW and use fees," and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, the Commission identifies in this section three particular types of fee scenarios and supply specific guidance on amounts that are presumptively not prohibited by Section 253. Informed by the its review of information from a range of sources, the Commission concludes that fees at or below these amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7) and are presumed to be "fair and reasonable compensation" under Section 253(c).

24. Based on its review of the Commission's pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, the Commission presumes that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities, and (b) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.

25. By presuming that fees at or below the levels above comply with Section 253, the Commission assumes that there would be almost no litigation by providers over fees set at or below these levels. Likewise, the Commission's review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.

C. Other State and Local Requirements That Govern Small Facilities Deployment

26. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, the Commission discusses how those statutory provisions apply to requirements outside the fee context both generally, and with particular focus on aesthetic and undergrounding requirements.

27. As discussed above, a state or local legal requirement constitutes an effective prohibition if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." The Commission's interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. And Section 253(c) preserves state and local authority to manage the public rights-of-way.

28. Given the wide variety of possible legal requirements, the Commission does not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although the Commission's discussion of fees above should prove instructive in evaluating specific requirements. Instead, the Commission focuses on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

29. *Aesthetics.* The Commission sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them. The Commission provides guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. The Commission concludes that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

30. Like fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees. The Commission therefore draws on its analysis of fees to address aesthetic requirements. The Commission explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible. Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

31. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.

32. The Commission appreciates that at least some localities will require some time to establish and publish aesthetics

standards that are consistent with this Declaratory Ruling. Based on its review and evaluation of commenters' concerns, the Commission anticipates that such publication should take no longer than 180 days after publication of this decision in the **Federal Register**.

33. *Undergrounding requirements.* The Commission understands that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition. In addressing this issue, the Commission first reiterates that while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove the imposition of such undergrounding requirements from the provisions of Section 253. In this sense, the Commission notes that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. Thus, undergrounding requirements can amount to effective prohibitions by materially inhibiting the deployment of wireless service.

34. *Minimum spacing requirements.* Some parties complain of municipal requirements regarding the spacing of wireless installations—*i.e.*, mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas. The Commission acknowledges that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements. For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would almost certainly have the effect of prohibiting service under the standards the Commission articulate here. Therefore, such requirements should be evaluated under the same standards as other aesthetic requirements.

D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way

35. The Commission confirms that it interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as light poles, traffic lights, and similar property suitable for hosting Small Wireless Facilities. As explained below, for two alternative and independent reasons, the Commission disagrees with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as "market participants" whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).

36. First, this effort to differentiate between such governmental entities' "regulatory" and "proprietary" capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine. Specifically, Section 253(a) expressly preempts certain state and local "legal requirements" and makes no distinction between a state or locality's regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)'s sweeping reference to "state [and] local statute[s] [and] regulation[s]" and "other State [and] local legal requirement[s]" demonstrates Congress's intent "to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services." Section 253(b) mentions "requirement[s]," a phrase that is even broader than that used in Section 253(a) but covers "universal service," "public safety and welfare," "continued quality of telecommunications," and "safeguard[s for the] rights of consumers." The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to "manag[ing] the public rights-of-way" and "requir[ing] fair and reasonable compensation," while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) "makes explicit a local government's continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public rights-of-way;" the Commission concludes here that, as a general matter, "manage[ment]" of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary. This reading, coupled with Section 253(c)'s narrow scope, suggests that Congress's omission of a blanket proprietary exception to preemption was intentional and thus that such conduct can be preempted under Section 253(a). The Commission therefore construes Section 253(c)'s requirements, including the requirement that compensation be "fair and reasonable," as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment. This interpretation is consistent with Section 253(a)'s reference to "State or local legal requirement[s]," which the Commission has consistently construed to include such agreements. In light of the foregoing, whatever the force of the market participant doctrine in other contexts, the Commission believes the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. The Commission observes once more that "[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d)," which "directs the Commission to preempt any statute, regulation, or legal requirement *permitted* or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term 'other legal requirements' easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [State] action [is] structured. The Commission does not believe that Congress intended this result."

37. Similarly, the Commission interprets Section 332(c)(7)(B)(ii)'s references to "any request[s] for authorization to place, construct, or modify personal wireless service facilities" broadly, consistent with Congressional intent. As described below, the Commission finds that "any" is unqualifiedly broad, and that "request" encompasses anything required to secure all authorizations necessary for the deployment of

Resolution No. 97-197

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS ESTABLISHING STANDARDS AND GUIDELINES FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES IN THE CITY OF THOUSAND OAKS

WHEREAS, the City Council has enacted an ordinance regulating the permitting, approval, location and design of wireless communications antennas and facilities under a City Development Permit for sites in commercial and industrial zones (Ord. 1292-NS) and pursuant to a Special Use Permit for sites in residential, Open Space and Public Lands zones, which permits are required for the installation of such facilities; and

WHEREAS, on September 2, 1997, the City Council adopted Resolution No. 97-161 establishing standards and guidelines for the installation of wireless communications facilities in the City of Thousand Oaks which did not permit such facilities in residential, open space or public lands zones; and

WHEREAS, pursuant to Thousand Oaks Municipal Code sections 9-4.2804 (a)(4)(x), 9-4.402, 9-4.502, 9-4.602, 9-4.702, 9-4.802, 9-4.903, 9-4.1003, 9-4.3104, 9-4.3202, and 9-4.3602, the City Council is to establish and adopt guidelines and standards for the consideration of Development Permit and Special Use Permit applications for such facilities.

NOW, THEREFORE, the City Council of the City of Thousand Oaks does hereby resolve as follows:

Prior Resolution Superseded

Resolution 97-161, adopted by City Council on September 2, 1997, is of no further force and effect and is hereby replaced and superseded in its entirety by this resolution.

SECTION 1. Purpose.

The purpose of this resolution is to provide a uniform and comprehensive set of standards and guidelines for the development of wireless communications facilities in Thousand Oaks. The standards contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of Thousand Oaks as set forth within the goals and policies of the Thousand Oaks General Plan, while not prohibiting, or having the effect of prohibiting, the development of needed telecommunications facilities.

SECTION 2. Policy.

All wireless communications facilities shall be developed in a way that minimizes their potential adverse effects upon the public welfare and visual impacts upon the community through careful design, siting, landscaping, screening and camouflage techniques so that they may be aesthetically and architecturally compatible with the existing natural or developed setting.

SECTION 3. Definition.

As defined in Section 9-4.283 of the Thousand Oaks Municipal Code, a "wireless communications facility" is any structure which transmits and/or receives radio frequency signals. It includes antennas, microwave dishes, towers, poles, equipment shelters, support structures, and other equipment for the transmission and receipt of signals that enable people to communicate independent of location. This includes the current technologies of cellular communications and Personal Communications Services. It does not include non-commercial antennas, radio and television signals, and non-commercial satellite dishes.

SECTION 4. Where Permitted.

A wireless communications facility is allowed in the zones specified in Chapter 4 of Title 9 of the Thousand Oaks Municipal Code, subject to the permitting standards, conditions and requirements set forth in this resolution.

A. A wireless communications facility is permitted in the following zones by the approval of a Development Permit, or modification to an existing active Development Permit:

Industrial Zones M-1 (Industrial Park) and M-2 (Light Manufacturing).

Commercial Zones C-0 (Commercial Office), C-1 (Neighborhood Shopping Center), C-2 (Highway & Arterial Business), C-3 (Community Shopping Center), C-4 (Regional Shopping Center), C-2/CC (Highway & Arterial Business/Civic Center), C-2/AM (Highway & Arterial Business/Auto Mall).

B. These commercially operated wireless communications facilities and uses may not be compatible with every proposed site in certain zones, and such antenna uses may have an adverse detrimental visual impact on neighboring residents at many of the possible proposed locations in the residential, Public Land and Open Space zones, therefore, the approval of such facilities in residential, public land and open space zones, will be discretionary with the City and subject to the approval of a Special Use Permit. A wireless communications facility is permitted in the following zones with the approval of a Special Use Permit, or an approved modification to an existing and active Special Use Permit, and subject to the conditions of such an approved SUP:

Residential Zones R-A (Rural-Agricultural), R-E (Rural-Exclusive), R-O (Single Family Estate), R-1 (Single Family Residential), R-2 (Two-family Residential), R-3 (Multiple-family Residential), RPD (Residential Planned Development), HPD (Hillside Planned Development)

P-L Zone (Public, Quasi-Public Lands & Facilities)

OS Zone (Open Space).

A Special Use Permit for a site in a residential, P-L or OS zone may be approved provided the Planning Commission , or the City Council on appeal, finds such facilities:

1. Are compatible with the present uses on the site, and with the adjoining uses, and the design will not have an unreasonably detrimental visual impact on the neighboring residents; and

2. The design of the facilities and all associated structures satisfy the development standards and requirements of sections 5 - 9 of this resolution, and also meet the following special requirements or standards:

a. A wireless communications facility or antenna to be located in residential, P-L or O-S zone will be affixed or attached to a structure such as a:

i. Utility pole, existing antenna, or street light standard, provided the antenna height does not project more than 3 feet above the pole or the light standard to which it shall be attached and said pole or standard is within the public right of way or a public or utility service easement;

ii. Church or other religious building, provided it is an integral architectural feature of that building;

iii. Stadium or playfield light standards, a pole/structure holding safety netting, flagpoles, or screening for recreational facilities, or above-ground water tanks (which tanks are unscreened and visible from adjoining properties), provided the antenna facility's height does not project more than 5 feet above the structure to which it shall be attached;

iv. School, government or hospital building, provided the building mounted antenna height does not project more than 15 feet above the height of the building to which it shall be attached; or,

v. Work of art, provided it is an integral and disguised part of that work of art.

b. Monopoles, as defined below, may be allowed in Public Lands (P-L) zones, but shall not be allowed within a ridgeline area, on a hilltop or on a hillside in a P-L zone.

c. Appurtenant structures such as equipment housing and power supplies are fully screened from view and may be required to be located underground.

d. Access to the site should only be achieved utilizing existing, graded or paved roadways.

SECTION 5. Development Standards.

The following criteria shall be used to evaluate each application for a wireless communications facility.

General Requirements

A. A visual analysis, which may include a viewshed rendering, field mock up (actual size), line of sight sections or other techniques, shall be prepared by the applicant in order to identify potential visual impacts of the proposed facility. The analysis shall include both pre-mitigation (before) and post-mitigation (after).

B. Wireless communications facilities shall be located and designed to avoid substantially altering scenic viewsheds.

C. On hillside locations, wireless communications facilities shall be located to avoid silhouetting on the ridgeline and shall blend with the surrounding existing environment, or with landscaping to be installed, in order to decrease visibility from off-site.

D. Wireless communications facilities shall be finished in a neutral color and non-reflective surface to blend with the immediate surroundings.

E. Building-mounted or roof-mounted wireless communications facilities shall be integrated into the building's architecture, through design, color and texture.

F. Ground-mounted free standing wireless communications facilities, such as antenna towers, monopoles, or other ground-mounted antennas, but excluding "whip antennas" (hereinafter collectively "monopoles") shall not exceed the maximum building height limit for the zone where located, as set forth in Title 9, Chapter 4, Article 25 of the Thousand Oaks Municipal Code, by more than 15 feet. A wireless communications facility may be attached to an utility pole, existing approved antenna, parking lot light standard, or street light standard in commercial and industrial zones, provided the antenna height does not project more than 3 feet above the pole, antenna, or the light standard to which it shall be attached. Roof-mounted wireless communications facilities on any building may exceed the proscribed height limit for structures in the zone, provided such roof-mounted wireless communications facilities do not exceed the height of the existing building to which it will be attached by more than 15 feet. No roof-mounted wireless communications facility shall be allowed in a residential zone.

G. Monopoles shall contain creative design features and shall be placed adjacent to existing buildings, next to structures or next to other appropriate solid or landscaped backgrounds in order to minimize visual impact. Monopoles shall not be permitted in residential or Open Space zones, except as in compliance with subsection 4,B,2. Monopoles may be allowed in P-L zones, but shall not be allowed within a ridgeline area, on a hilltop or on a hillside in a P- L zone. All requests for a monopole installation shall be referred to the Planning Commission for review and approval. Lattice towers are prohibited. Any facility (monopole or roof-mounted) may be approved for multiple users (a future co-location site) provided there is a design and plan showing the structure with the maximum use and a limit on the number of separate user antennas or other facilities to be attached.

H. Landscaping may be required to screen wireless communications facilities from public view, and/or to provide a backdrop to camouflage those facilities. In such instances, a conceptual landscape plan and irrigation plan shall be submitted with the project application indicating all vegetation and its proposed long term maintenance that is needed to adequately screen the facility from adjacent land uses and public view. The landscaping should be consistent with the surrounding vegetation or existing landscaping. Landscaping shall comply with standards and guidelines set forth in City Council Resolution 93-74, as amended. The City may require a cash bond, to be released after three years, if landscaping is established.

I. Wireless communications facilities shall not be artificially lighted, except as required for security purposes. In such required instances, motion sensor lighting shall be used.

J. Wireless communications facilities shall not bear any signs or advertising other than that required by Federal Communications Commission regulations.

K. Accessory structures supporting wireless communications facilities shall be designed to be unobtrusive and architecturally compatible with existing structures or surroundings. Accessory structures shall meet the minimum setbacks in the applicable zoning classification unless aesthetic or safety issues warrant an exception, and except when such a set back is not feasible for those facilities which must be located within the public right of way (such as equipment cabinets for micro cells on street light poles or existing utility structures).

L. Wireless communications facilities shall be integrated into the design of existing buildings and appurtenant features or structures whenever possible. Examples include building facia, street lighting fixtures, utility poles, flag poles, church steeples, clock towers, public art and artificial vegetation.

M. A decorative, solid wall or other screening around wireless communications facilities may be required to mitigate visual impacts from neighboring land uses and should be of a design that harmonizes with the surrounding environment.

Co-location of Facilities; Alternatives

N. An analysis shall be prepared by the applicant which identifies a reasonable number, if any exist, of alternative locations and/or co-location facilities which are available for such use and would provide a reasonably equivalent level of the proposed communication services. The analysis shall address the potential, as well as any requests made by the applicant, for the co-location of the proposed facility at an existing approved site within the intended service area. The City may obtain an independent verification of the analysis at the applicant's expense.

Public Health

O. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health in violation of any Federal Communications Commission (FCC) standard or regulation. No facility shall produce radio frequency and electromagnetic power emissions which exceed the most recently adopted FCC standards for safe human exposure to such forms of non-ionizing electromagnetic radiation.

Height Limits

P. The Planning Commission may approve an antenna height that exceeds the limits set forth in this resolution, provided it finds that the applicant has met its burden of establishing that with all existing and contemplated facilities along with the proposed type of facility at described height limit in this resolution, effective coverage of the area targeted for wireless service coverage could not be achieved.

SECTION 6. Contents of Entitlement Applications.

The entitlement application required by the Thousand Oaks Municipal Code shall contain the information required for that type of application as well as the following:

A. The applicant shall provide written verification that the proposed project RFR and EMF emissions will fall within the adopted FCC standards for safe human exposure to such forms of non-ionizing electromagnetic radiation when operating at full strength and capacity. If it is proposed to be located on a site with other existing wireless communications facilities, the application shall address the cumulative emissions of all facilities.

B. A scaled site plan of the subject property showing the proposed wireless communications facility, property lines, abutting properties and land uses, all structures on the subject property as well as adjacent properties, walls, setbacks, all ingress and egress, nearby streets, major vegetation, required grading, easements, new utilities and other pertinent information.

C. All affected exterior elevations and architectural features, a color and material sample board of all materials to be used for the proposed installation.

D. A map and list showing all property owners names and addresses within 300 feet of the subject property, for purposes of notification.

E. Manufacturer's details and installation specifications, including remedial architectural treatment to improve or soften the appearance of the installation.

SECTION 7. Applications

Where a development permit has already been approved for a site and is in effect, the entitlement required for approval of a wireless communications facility on that site shall be a minor modification to the applicable development permit, provided full compliance with the standards and guidelines is achieved.

In other cases, where no development permit is in effect for a site, the wireless communications facility shall require the filing of a development permit application.

SECTION 8. Entitlement Approval Procedure

The Director of Community Development shall review the application to insure that the functional arrangement and the general appearance of the installation conforms with the intent and requirements of this resolution. Wireless communications facilities approved by the Director of Community Development shall conform to these standards and guidelines as well as with other City ordinances and policies pertaining to development. All applications that require a special use permit, or a special use permit modification, shall be referred to the Planning Commission for review and approval. If an application is considered by the Director to be a policy or precedent-setting matter, it shall be referred to the Planning Commission for rendering of a decision.

SECTION 9. Miscellaneous

CC & R's: This resolution is not intended to displace or supersede covenants, codes and restrictions (CC & R's) found in title to affected properties within the City of Thousand Oaks that are more restrictive and/or not in conflict with said City policies pertaining to this resolution.

Removal of Facilities: A wireless communications facility which is not actively utilized to receive and transmit wireless communications for a period of 90 days shall be removed by the current owner of the facility upon 30 days notice from the Director of Community Development.

SECTION 10: Applicability

The standards and requirements of this resolution shall not apply to any wireless communications facility which has not been constructed yet but has received all City discretionary permits and entitlements as of this 7th of October, 1997.

SECTION 11: Severability

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

* * * * *

PASSED AND ADOPTED this 7th day of October, 1997.

Judith A. Lazar, Mayor
City of Thousand Oaks, California

ATTEST:

Nancy A. Dillon, City Clerk

APPROVED AS TO FORM:

Mark G. Sellers, City Attorney

APPROVED AS TO ADMINISTRATION:

Grant R. Brimhall, City Manager
cao:160-45:H:wr4

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
CITY OF THOUSAND OAKS)

I, NANCY A. DILLON, City Clerk of the City of Thousand Oaks, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Resolution No. 97-197 which was duly and regularly passed and adopted by said City Council at a regular meeting held October 7, 1997, by the following vote:

AYES: Councilmembers Parks, Markey, Fox, Zeanah and Mayor Lazar

NOES: None

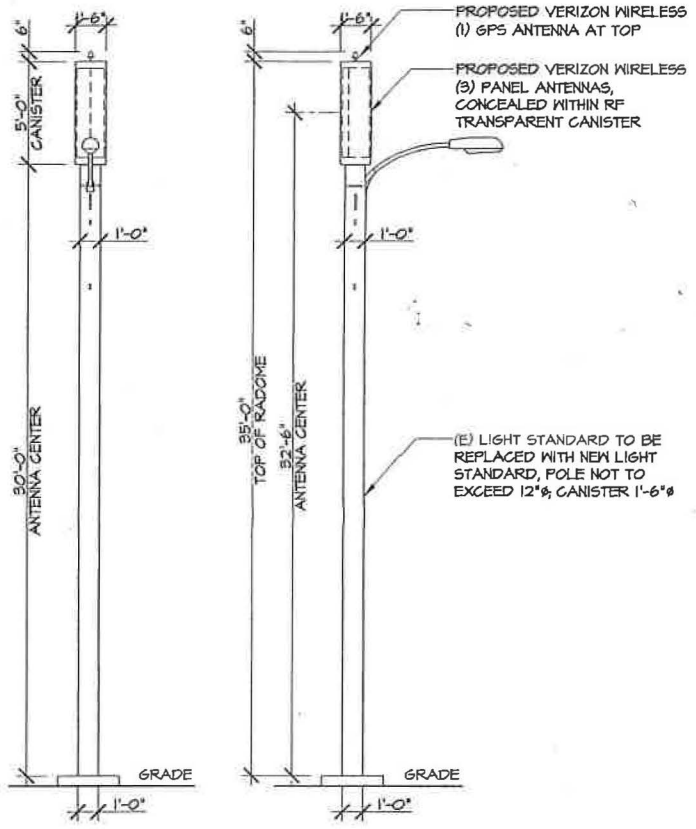
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Thousand Oaks, California.

Nancy A. Dillon, City Clerk
City of Thousand Oaks, California

ANTENNA LAYOUT

SCALE @ 11x17: 1/4" = 1'-0"
SCALE @ 24x36: 1/2" = 1'-0"
0' 1' 2' 4'

3



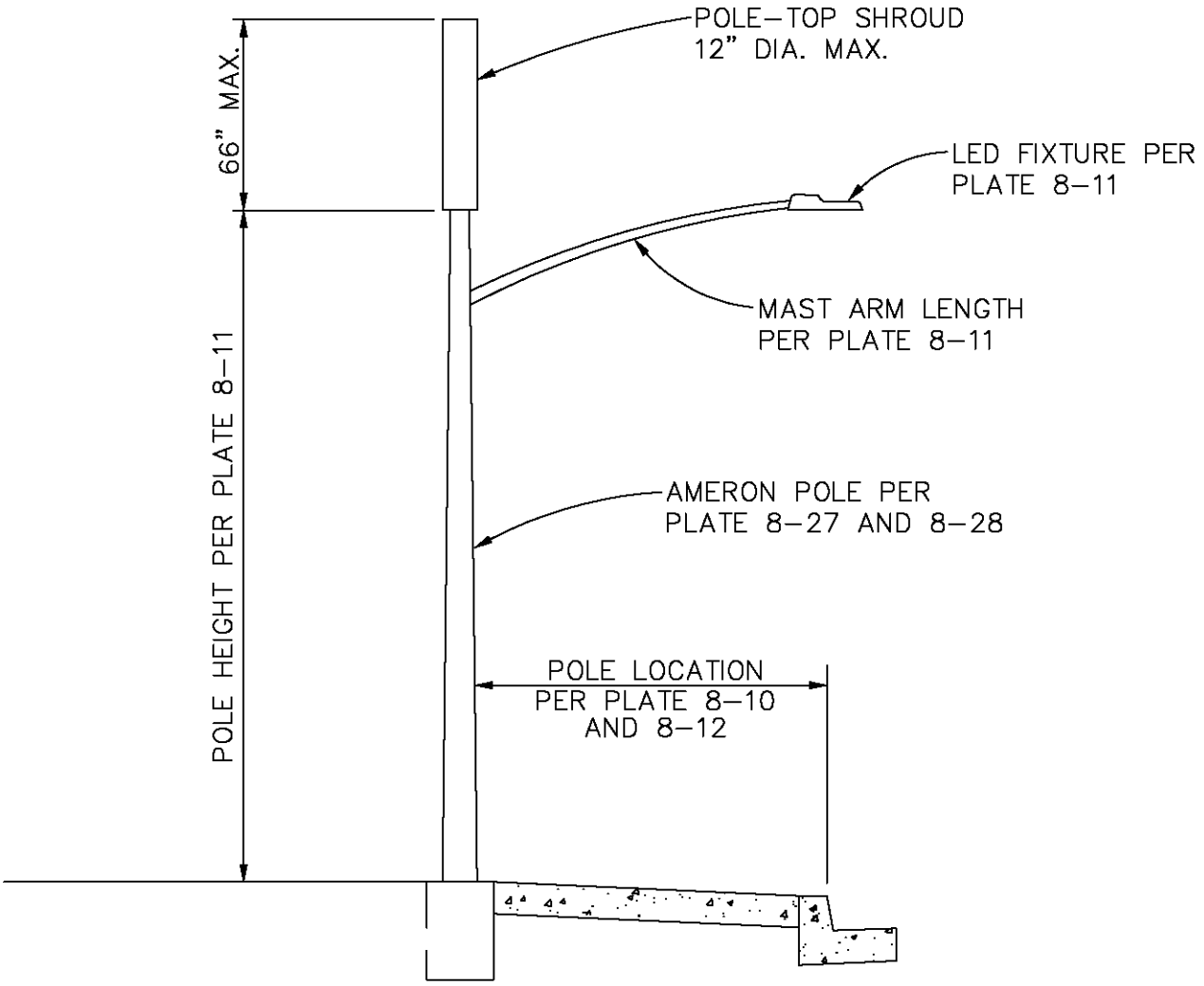
NOTE: REQUIRES A SEPARATE MONOPOLE PLAN

PROPOSED LIGHT POLE ELEVATIONS

SCALE @ 11x17: 1/8" = 1'-0"
SCALE @ 24x36: 1/4" = 1'-0"
0' 2' 4' 8'

4

ATTACHMENT #7



1. ABOVE GROUND ELECTRICAL METER FACILITIES ARE PROHIBITED. APPLICANT SHALL EXECUTE A CONTRACT WITH SOUTHERN CALIFORNIA EDISON FOR SERVICE UNDER THE WIRELESS TECHNOLOGY RATE (WTR) SCHEDULE. WTR EQUIPMENT SHALL BE INSTALLED BELOW GRADE.
2. A FACILITY SHALL NOT BE LOCATED WITHIN ANY PORTION OF THE PUBLIC RIGHT–OF–WAY THAT INTERFERES OR MAY INTERFERE WITH CITY AND EMERGENCY OPERATIONS, AND PEDESTRIAN AND VEHICULAR ACCESS.
3. VAULTS AND PULL BOXES SHALL BE INSTALLED FLUSH TO GRADE.

CITY OF THOUSAND OAKS PUBLIC WORKS DEPARTMENT	**STANDARD SMALL WIRELESS FACILITY INSTALLED ON STREETLIGHTS**	PLATE NO. **8-26**

THE FOLLOWING DESIGN STANDARDS SHALL APPLY TO ALL SMALL WIRELESS FACILITIES ON SOUTHERN CALIFORNIA EDISON STREETLIGHTS.

1. A SMALL WIRELESS FACILITY MAY ONLY BE INSTALLED ON A SOUTHERN CALIFORNIA EDISON STREETLIGHT IF THE STREETLIGHT IS AN AMERON POLE APPROVED BY THE CITY AND SOUTHERN CALIFORNIA EDISON WITH A SINGLE MAST ARM. THE STREETLIGHT POLE SHALL BE DESIGNED TO RESEMBLE EXISTING POLES IN THE PUBLIC RIGHT-OF-WAY NEAR THAT LOCATION, INCLUDING SIZE, HEIGHT, COLOR, MATERIALS, AND STYLE.

2. THE CITY RESERVES THE FINAL RIGHT TO DETERMINE WHAT STREETLIGHT MAY BE USED AT A PROPOSED LOCATION BASED ON THE LIGHTING NEEDS OF THAT LOCATION. ON A CASE-BY-CASE BASIS AND AT THE DISCRETION OF THE CITY, IF ANOTHER SOUTHERN CALIFORNIA EDISON APPROVED STREETLIGHT POLE IS MORE SUITABLE FOR THE PROPOSED INSTALLATION LOCATION, THAT POLE MAY BE PERMITTED.

3. EQUIPMENT SHALL BE INSTALLED IN A POLE-TOP SHROUD THAT COMPLIES WITH THE FOLLOWING REQUIREMENTS:

   A. THE POLE-TOP SHROUD SHALL BE OF A TUBULAR/CYLINDRICAL FORM FACTOR.
   B. MAXIMUM HEIGHT: 66" (MEASURED FROM THE TOP OF THE STREETLIGHT POLE TO THE TOP OF THE SHROUD)
   C. MAXIMUM DIAMETER: 12"
   D. STAINLESS STEEL BANDING IS PROHIBITED. THE STREETLIGHT POLE SHALL BE EQUIPPED WITH A TOP-OF-POLE MOUNTING BRACKET TO ACCOMMODATE THE SMALL WIRELESS FACILITY.

4. EQUIPMENT THAT DOES NOT COMPLY WITH THE REQUIREMENTS SET FORTH ABOVE SHALL BE INSTALLED BELOW GRADE, WITH THE EXCEPTION ONLY FOR ANTENNAS.

5. BASE SHROUDS AND SHROUDS MOUNTED TO THE SIDE OF THE POLE ARE PROHIBITED.

6. ALL VENTILATION ON THE STREETLIGHT STRUCTURE MUST BE VIA FLUSH VENTS. VENTS MUST BE DESIGNED TO MAXIMALLY BLEND WITH THE OVERALL STREETLIGHT STRUCTURE.

7. ALL CABLING, WIRES, AND CONDUIT SHALL BE CONCEALED COMPLETELY WITHIN THE POLE AND THE CONCEALMENT SHROUD. CABLING AND WIRES SHALL ENTER/EXIT THE STREETLIGHT POLE THROUGH CONDUIT SWEEPS WITHIN THE STREETLIGHT FOOTING.

CHANGE	DESCRIPTION	DATE	INITIAL

APPROVED: _____ _____
CITY ENGINEER DATE

CITY OF THOUSAND OAKS PUBLIC WORKS DEPARTMENT	**STANDARD SMALL WIRELESS FACILITY INSTALLED ON STREETLIGHTS**	PLATE NO. **8-27**

THE FOLLOWING DESIGN STANDARDS SHALL APPLY TO ALL SMALL WIRELESS FACILITIES ON CITY–OWNED STREETLIGHTS.

1. IF AN EXISTING STREETLIGHT POLE IS PROPOSED TO BE REPLACED WITH A NEW STREETLIGHT POLE TO ACCOMMODATE THE SMALL WIRELESS FACILITY, THE REPLACEMENT STREETLIGHT POLE SHALL BE DESIGNED TO RESEMBLE EXISTING POLES IN THE PUBLIC RIGHT–OF–WAY NEAR THAT LOCATION, INCLUDING SIZE, HEIGHT, COLOR, MATERIALS, AND STYLE.

2. IF A NEW CITY STREETLIGHT POLE THAT WILL NOT REPLACE AN EXISTING STREETLIGHT IS PROPOSED, THE NEW STREETLIGHT POLE SHALL BE DESIGNED TO RESEMBLE EXISTING POLES IN THE RIGHT–OF–WAY NEAR THAT LOCATION, INCLUDING SIZE, HEIGHT, COLOR, MATERIALS, AND STYLE.

3. ALL VENTILATION ON THE STREETLIGHT STRUCTURE MUST BE VIA FLUSH VENTS. VENTS MUST BE DESIGNED TO MAXIMALLY BLEND WITH THE OVERALL STREETLIGHT STRUCTURE.

4. ALL SHROUDS SHALL BE COLORED TO MATCH THE STREETLIGHT POLE.

5. ALL EQUIPMENT SHALL BE INSTALLED IN SHROUDS AS PERMITTED HEREIN AND BELOW GRADE.

6. ALL CABLING, WIRES, AND CONDUIT SHALL BE CONCEALED COMPLETELY WITHIN THE POLE AND THE CONCEALMENT SHROUD. CABLING AND WIRES SHALL ENTER/EXIT THE STREETLIGHT POLE THROUGH CONDUIT SWEEPS WITHIN THE STREETLIGHT FOOTING.

CHANGE	DESCRIPTION	DATE	INITIAL

APPROVED: _____ _____
CITY ENGINEER DATE

CITY OF THOUSAND OAKS PUBLIC WORKS DEPARTMENT	**STANDARD SMALL WIRELESS FACILITY INSTALLED ON STREETLIGHTS**	PLATE NO. **8-28**

ATTACHMENT #8

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS ADDING ARTICLE 44 AND AMENDING SECTION 9-4.202, SECTION 9-4.2104 AND SECTION 9-4.2105 OF THE THOUSAND OAKS MUNICIPAL CODE REGULATING WIRELESS COMMUNICATIONS FACILITIES PURSUANT TO APPLICABLE FEDERAL LAWS

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws;

WHEREAS, pursuant to California Government Code sections 36934 and 36937(b), the City Council may, by a four-fifths vote, adopt an urgency ordinance for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, to be effective immediately upon passing;

WHEREAS, the City Council of the City of Thousand Oaks deems it necessary to adopt an urgency ordinance to regulate the placement of small wireless facilities ("SWFs") in the public rights-of-way given recent and significant changes in federal law that affect local authority to regulate such facilities;

WHEREAS, on August 2, 2018, the FCC adopted a Third Report and Order and Declaratory Ruling *In the Matter of Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (WC Docket No. 17-84, WT Docket No. 17-79) that formally prohibits express and *de facto* moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis;

WHEREAS, on September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order *In the Matter of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WT Docket No. 17-79, WC Docket No, 17-84), effective January 14, 2019, that creates a new regulatory classification for SWFs, requires State and local governments to process applications for SWFs within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition;

WHEREAS, existing local law pursuant to City Council Resolution 97-197 requires a special use permit or development permit for all wireless communications facilities, the review and appeal procedures for such permits would routinely occur beyond the federal timeframes for review, and such failures to act within the applicable timeframe would expose the City to effective prohibition claims under federal law that provide injunctive relief to the wireless applicant for "shovel-ready" permits outside the City's standard review and approval process;

WHEREAS, SWFs installed within public rights-of way that have not been appropriately reviewed and approved by the City create significant and far-reaching local concerns about traffic and pedestrian safety; land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, height, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and backup power sources; and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare;

WHEREAS, given the rapid and significant changes in federal law, the actual and effective prohibition on moratoria to amend local policies in response to such changes, the January 14, 2019 effective date of the expedited federal shot clocks, and the significant adverse consequences for noncompliance with federal law, the City Council desires to amend Thousand Oaks Municipal Code, Section 9-4.202, Section 9-4.2104 and Section 9-4.2105 and add Article 44 to comply with such laws in order to preserve the public peace, health, safety and welfare to the maximum extent practicable (collectively, the "Amendments");

WHEREAS, on March 5, 2019, the City Council held a duly noticed public meeting on the Amendments, reviewed and considered the staff report, other written reports, and other information contained in the record.

The City Council of the City of Thousand Oaks does hereby ordain as follows:

Part 1

Findings.

The City Council finds that:

A. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.

B. The Amendments are consistent with the General Plan, Thousand Oaks Municipal Code and applicable federal and State law.

C. The Amendments will not be detrimental to the public interest, health, safety, convenience or welfare, and are necessary for the immediate preservation of the public peace, health or safety for which the urgency is declared.

Part 2

CEQA.

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends the Thousand Oaks Municipal Code to authorize the adoption of regulations related to SWFs and modifications to existing wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new SWF or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA under the general rule.

Part 3

Article 44 of Chapter 4 of Title 9 of the Thousand Oaks Municipal Code is hereby added to read as follows:

"Article 44. Wireless Communications Facilities

Sec.9-4.4401. Purpose

The purpose of this Article is to establish rules and procedures to enable the deployment of wireless communications facilities consistent with State and Federal laws while limiting adverse impacts on the environment and public use of City rights-of-way.

Sec. 9-4.4402. Permits Required

All wireless communications facilities, small wireless facilities, and eligible facilities requests shall be subject to a permit as specified in Article 21 of this Chapter.

Sec. 9-4.4403. Compliance with Policies

All wireless communications facilities, small wireless facilities, and eligible facilities requests and permits shall be subject to the standards and procedures provided in the applicable City Council policies as adopted and amended from time to time by City Council resolution."

Part 4

Section 9-4.202 of the Thousand Oaks Municipal Code is amended by adding the following definitions in their respective alphabetical order and to read as follows:

> "Eligible facilities request" shall mean the same as defined by Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 and the Federal Communications Commission in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded.
>
> "Small wireless facility" or "small wireless facilities" shall mean the same as defined by the Federal Communications Commission in 47 C.F.R. § 1.6002(*l*), as may be amended or superseded.

Part 5

Sec 9-4.2103 of the Thousand Oaks Municipal Code (Permitted Use Matrix – Matrix Key) is hereby amended to add new entitlement categories, as follows:

"Symbol	**Type of Entitlement Required**	**Discretionary Authority**
…	…	…
SWF	Small Wireless Facility Permit	CD Director or City Engineer
EFR	Eligible Facilities Request Permit	CD Director or City Engineer"

Part 6

Section 9-4.2104 of the Thousand Oaks Municipal Code is amended to read as follows:

"Land Use Category	**Residential Zoning Classification**									
	R-A	R-E	R-O	R-2	R-3	RPD	RPD-SFD	HPD	HPD-SFD	TPD
	…	…	…	…	…	…	…	…	…	…
Wireless communications facilities[2]	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP
Small wireless facilities	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF
Eligible facilities requests (6409(a))	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR
Footnote	[2] Wireless communications facilities that do not meet the definition of small wireless facilities or eligible facilities requests.									
…	…	…	…	…	…	…	…	…	…	…"

Part 7

Section 9-4.2105 of the Thousand Oaks Municipal Code is amended to read as follows:

"Land Use Category	**Nonresidential Zoning Classification**									
	C-O	C-1	C-2	C-3	C-4	C-2/AM	M-1	M-2	P-L	OS
	…	…	…	…	…	…	…	…	…	…
Wireless communications facilities[5]	DP	DP	DP	DP	DP	DP	DP/SUP[1]	DP/ SUP[1]	SUP	SUP
Small wireless facilities	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF	SWF
Eligible facilities requests(6409(a))	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR	EFR

"Land Use Category	Nonresidential Zoning Classification									
Footnote	[5] Wireless communications facilities that do not meet the definition of small wireless facilities or eligible facilities requests.									
…	…	…	…	…	…	…	…	…	…	…"

Part 8
(Uncodified)
Conflicts with Prior Ordinances or Resolutions

If the provisions in this Ordinance conflict in whole or in part with any other City regulation, ordinance or resolution adopted prior to the effective date of this section, the provisions in this Ordinance will control.

Part 9
(Uncodified)
Severability

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this title; it being hereby expressly declared that this title, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Part 10
(Uncodified)
Effective Date

This Ordinance shall take effect immediately upon passage and adoption.

PASSED AND ADOPTED THIS 5th day of March, 2019.

Robert McCoy, Mayor
City of Thousand Oaks, California

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

_____

Patrick J. Hehir, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

_____

Andrew P. Powers, City Manager

ATTACHMENT #9

RESOLUTION NO.

A RESOLUTION OF THE CITY OF THOUSAND OAKS ADOPTING POLICIES REGULATING SMALL WIRELESS FACILITIES AND ELIGIBLE FACILITIES REQUESTS PURSUANT TO THOUSAND OAKS MUNICIPAL CODE ARTICLE 44

WHEREAS, Thousand Oaks Municipal Code Article 44 authorizes the City to adopt policies that establish the rules and procedures by which the City reviews permit applications for small wireless facilities and eligible facilities requests; and

WHEREAS, “small wireless facilities” are designed to provide wireless signals to a small area and need to be deployed in greater numbers than traditional “macrocell” facilities. They are also smaller in size. Federal regulations impose limits on local authority over small wireless facilities in order to spur their deployment throughout the nation; and

WHEREAS, “eligible facilities requests” are proposals to modify an existing wireless tower or base station (basically a support structure other than a tower) that does not substantially change the physical dimensions of such tower or base station. Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) and related FCC regulations restrict local authority over these facilities; and

WHEREAS, the City has developed regulatory policies for small wireless facilities and eligible facilities requests, which are attached to this resolution as Exhibit A and Exhibit B, respectively, and incorporated herein by reference (collectively, the “Policies”); and

WHEREAS, subject to certain limitations in federal and California law, the City Council finds the Policies are consistent with the provisions and intent of the General Plan, and Thousand Oaks Municipal Code sections 9-4.202, 9-4.2104, 9-4.2105, Article 44 and any other applicable provisions; and

WHEREAS, the City Council finds the Policies will, to the extent permitted by federal and California law, protect and promote public health, safety and welfare, as well as balance the benefits from advanced wireless services with local values, which include, without limitation, the aesthetic character of the City.

WHEREAS, these Policies will allow the deployment of advanced wireless technology necessary to keep up with the growing demand by residents, businesses and visitors for more wireless signal speed and data capacity.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Thousand Oaks as follows:

1. The above recitals are true and correct and incorporated herein by reference.

2. Small wireless facilities and eligible facility requests are hereby exempt from Resolution No. 97-197 (Standards and Guidelines for Installation of Wireless Communications Facilities) which addresses where and how wireless communications facilities are permitted.

3. City Council policies regulating small wireless facilities attached to this resolution as Exhibit A, are hereby adopted.

4. City Council policies regulating eligible facilities requests, attached to this resolution as Exhibit B, are hereby adopted.

5. Each such policy shall be effective immediately and may be amended from time to time, or repealed, by resolution of the City Council.

PASSED AND ADOPTED THIS 5TH day of March, 2019.

Robert McCoy, Mayor
City of Thousand Oaks, California

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Patrick J. Hehir, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

EXHIBIT A

THOUSAND OAKS POLICY REGULATING SMALL WIRELESS FACILITIES

(appears behind this cover)

THOUSAND OAKS POLICY REGULATING SMALL WIRELESS FACILITIES

SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

(a) On September 27, 2018, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. Numerous legal challenges to the *Small Cell Order* have been raised but its regulations will become effective while such challenges are pending. Although the provisions may well be invalidated by future action, the City recognizes the practical reality that failure to comply with the *Small Cell Order* while it remains in effect will likely result in greater harm to the City's interests than if the City ignored the FCC's ruling. Accordingly, the City Council adopts this Policy ("Policy") as a means to accomplish such compliance that can be quickly amended or repealed in the future without the need to amend the City's municipal code.

(b) The City of Thousand Oaks intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits from advanced wireless services with local values, which include without limitation the aesthetic character of the City. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

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

SECTION 1.2. DEFINITIONS

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

(b) **Defined Terms.**

(1) "**accessory equipment**" means the same as "antenna equipment" as defined by FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

(2) "**antenna**" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

(3) "**approval authority**" means the City official(s) responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy.

(4) "**collocation**" means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

(5) "**concealed**" or "**concealment**" means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly

view the equipment and would not likely recognize the existence of the wireless facility or concealment technique.

(6) "**decorative pole**" means any pole that includes decorative or ornamental features and/or materials intended to enhance the appearance of the pole. Decorative or ornamental features include, but are not limited to, fluted poles, ornate luminaires and artistic embellishments. Cobra head luminaires and octagonal shafts made of concrete or crushed stone composite material are not considered decorative or ornamental.

(7) "**FCC**" means the Federal Communications Commission or its duly appointed successor agency.

(8) "**FCC Shot Clock**" means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded.

(9) "**ministerial permit**" means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.

(10) "**personal wireless services**" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

(11) "**personal wireless service facilities"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.

(12) **"public right-of-way"** means any land which has been reserved for or dedicated to the City for the use of the general public for public road purposes, including streets, sidewalks and unpaved areas.

(13) "**RF**" means radio frequency or electromagnetic waves.

(14) "**Section 6409**" means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

(15) "**small wireless facility**" or "**small wireless facilities**" means the same as defined by the FCC in 47 C.F.R. § 1.6002(*l*), as may be amended or superseded.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

(a) **Applicable Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the City's jurisdictional boundaries.

(b) **Approval Authority.** The approval authority for small wireless facilities in public rights-of-way shall be the City Engineer or his/her designee. The approval authority for small wireless facilities outside of public rights-of-way shall be the Community Development Director or his/her designee.

(c) **Small Wireless Facility Permit.** A small wireless facility permit, subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement structure.

(d) **Request for Approval Pursuant to Section 6409**. Notwithstanding anything in the Policy to the contrary, requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be subject to standards and procedures in *Section 6409 policy*.

(e) **Other Permits and Approvals.** In addition to a small wireless facility permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small wireless facility permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any small cell permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 2.2. SMALL WIRELESS FACILITY PERMIT APPLICATION REQUIREMENTS

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

(1) **Application Form.** The applicant shall submit a complete, duly executed small wireless facility permit application using the then-current City form which must include the information described in this subsection (a).

(2) **Application Fee.** The applicant shall submit the applicable small wireless facility permit application fee established by City Council resolution. Batched applications must include the applicable small wireless facility permit application fee for each small wireless facility in the batch. If no permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.

(3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project and project site, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

(4) **Site Plan.** The applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments, buildings, walls, fences and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

(5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location.

(6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(*l*). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding as provided in Section 2.4(c).

(7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.

(9) **Site Agreement.** For any small wireless facility proposed to be installed on any structure located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.

Refusal to accept the terms and conditions in the City's site agreement shall be an independently sufficient basis to deny the application.

(10) **Property Owner's Authorization.** The applicant must submit a written authorization signed by the property owner that authorizes the applicant to submit a wireless application in connection with the subject property and, if the wireless facility is proposed on a utility-owned support structure, submit a written final utility design authorization from the utility.

(11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

(12) **Justification for Non-Preferred Location or Structure.** If a facility is proposed anywhere other than the most preferred location or the most preferred structure within 500 feet of the proposed location as described in Section 2.6, the applicant shall demonstrate with clear and convincing written evidence all of the following:

A. A clearly defined technical service objective and a map showing areas that meets that objective;
B. A technical analysis that includes the factual reasons why a more preferred location(s) and/or more preferred structure(s) within 500 feet of the proposed location is not technically feasible;
C. Bare conclusions that are not factually supported do not constitute clear and convincing written evidence.

(b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

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

(a) **Requirements for a Duly Filed Application.** Any application for a small wireless facility permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).

(1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Potential applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications as provided in Section 2.3(d). Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to offer an appointment within five working days after the approval authority receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.

(2) **Pre-Submittal Conferences.** The City encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

(b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection (b), a “substantive response” must include the materials identified as incomplete in the approval authority’s notice.

(c) **Batched Applications.** Applicants may submit up to five individual applications for a small wireless facility permit in a “batch” to be reviewed together at the same time; provided, however, that (i) all small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type; (ii) each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch; (iii) if any

individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete; (iv) if any application is withdrawn or deemed withdrawn from a batch, all other applications in the entire batch shall be automatically deemed withdrawn; and (v) if any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

(d) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.4. APPROVALS AND DENIALS

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

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

(1) the proposed project meets the definition for a “small wireless facility” as defined by the FCC;

(2) the proposed facility would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;

(3) the proposed facility would not be located on a prohibited support structure identified in this Policy;

(4) the proposed facility would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;

(5) the proposed facility complies with all applicable design standards in this Policy;

(6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and

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

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

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

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

(a) **General Conditions.** In addition to all other conditions adopted by the approval authority permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).

(1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

(2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Thousand Oaks Municipal Code and this Policy that exist at the time the decision to renew the permit is rendered. The approval authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this permit will automatically expire 10 years

and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety reasons.

(3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.

(4) **Build-Out Period.** This small wireless facility permit will automatically expire six (6) months from the approval date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the City will not extend the build-out period, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

(5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small wireless facility permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

(6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small wireless facility permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Thousand Oaks Municipal Code, this Policy any permit, any permit condition or any applicable law or

regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Thousand Oaks Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

(7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Thousand Oaks Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.

(8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

(9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.

(10) **Indemnification.** The permittee shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or

proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

(11) **Performance Bond.** Applicable to small wireless facilities within public rights-of-way. Before the Building Division issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the approval authority in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the approval authority shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

(12) **Permit Revocation**. The approval authority may recall this approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this approval after notice and

an opportunity to cure the violation is provided to the permittee. If the noncompliance continues after notice and reasonable opportunity to cure the noncompliance, the approval authority may revoke this approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

(13) **Record Retention.** Applicable to small wireless facilities within public rights-of-way. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

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

(15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless otherwise approved by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

(16) **Cost Reimbursement.** Applicable to small wireless facilities within public rights-of-way. The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

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

(18) **Electric Meter Upgrades.** Applicable to small wireless facilities within public rights-of-way. If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

(19) **Rearrangement and Relocation.** Applicable to small wireless facilities within public rights-of-way. The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6. LOCATION REQUIREMENTS

(a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in Section 2.6. To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve less-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.

(b) **Locational Preferences.** The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:

(1) any location in a non-residential zone or non-residential Specific Plan designation;

(2) any location in a residential zone 250 feet or more from any structure approved for a residential use;

(3) If located in a residential area, a location that is as far as possible from any structure approved for a residential use.

(c) **Support Structures in Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:

(1) existing or replacement streetlight poles;

(2) new, non-replacement streetlight poles;

(3) new or replacement traffic signal poles;

(4) new, non-replacement poles;

(5) existing or replacement wood utility poles.

(d) **Prohibited Support Structures in Public Rights-of-Way.** The City prohibits small wireless facilities to be installed on the following support structures:

(1) decorative poles;

(2) signs;

(3) any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

(4) new, non-replacement wood poles.

SECTION 2.7. DESIGN STANDARDS

(a) **General Standards.**

(1) **Noise.** Noise emitted from small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards identified in the Thousand Oaks Noise Element as may be amended or superseded.

(2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

(3) **Landscape Features.** No small wireless facility shall encroach into the protected zone of a protected oak or landmark tree. Small wireless facilities shall not displace any other existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscaping and landscape maintenance must be performed in accordance with Thousand Oaks Municipal Code Section 7-2.901 *et seq.*, as may be amended or superseded.

(4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

(5) **Signage; Advertisements.** All small wireless facilities must include signage not to exceed one (1) square feet in sign area that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.

(6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human

exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

(7) **Overall Height.** Small wireless facilities must comply with the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95 and 128).

(b) **Small Wireless Facilities within Public Rights-of-Way.**

(1) **Antennas.**

(A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connecters must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.

(B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume.

(2) **Accessory Equipment.**

(A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.

(B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

(C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted

between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.

(D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.

(E) **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.

(F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

(3) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the design(s) for small wireless facilities on streetlights described in the City's Road Design and Construction Standards. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

(4) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas in a radome above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the radome and stand-off bracket. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

(5) **New, Non-Replacement Poles.** Applicants that propose to install a small wireless facility on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

(6) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.

(7) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

(8) **Obstructions; Public Safety and Circulation.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the

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

(9) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

(10) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

(11) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal unless required by the utility company.

(12) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

(13) **Lines of Sight.** No wireless facility shall be located so as to obstruct pedestrian or vehicular lines-of-sight.

(c) Small Wireless Facilities Outside of Public Rights-of-Way

(1) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.

(2) **Backup Power Sources.** The Director shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the Director may approve sockets or other connections used for temporary backup generators.

(3) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.

(4) **Freestanding Small Wireless Facilities.** All new poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.

(5) **Small Wireless Facilities on Existing Buildings**

(A) All components of building-mounted wireless facilities must be completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas. Examples include, but are not limited to, antennas and wiring concealed behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials.

(B) If the applicant demonstrates with clear and convincing evidence that integration with existing building features is technically infeasible, the applicant may propose to conceal the wireless facility within a new architectural element designed to match or mimic the architectural details of the building including length, width, depth, shape, spacing, color, and texture.

(6) **Small Wireless Facilities on Existing Lattice Tower Utility Poles**

(A) Antennas must be flush-mounted to the side of the pole and designed to match the color and texture of the pole. If technologically infeasible to flush-mount an antenna, it may be mounted on an extension arm that protrudes as little as possible from the edge of the existing pole provided that the wires are concealed inside the extension arm. The extension arm shall match the color of the pole.

(B) Wiring must be concealed in conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.

(C) All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the structures on which they are mounted. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.

(D) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.

(7) **Small Wireless Facilities on Existing Wood Utility Poles**

(A) All antennas must be installed within a cylindrical shroud (radome) above the top of the pole unless the applicant demonstrates that mounting antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record.

(B) All antennas must be concealed within a shroud (radome) designed to match the color or the pole, except as described in (8) (E).

(C) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.

(D) If it is technically infeasible to mount an antenna above the pole it may be flush-mounted to the side of the pole. If it is technically infeasible to flush-mount the antenna to the side of the pole it may be installed at the top of a stand-off bracket/extension arm that protrudes as little as possible beyond the side of the pole. Antenna shrouds on stand-off brackets must be a medium gray color to blend in with the daytime sky.

(E) Wires must be concealed within the antenna shroud, extension bracket/extension arm and conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.

(F) All accessory equipment must be placed underground, unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the pole. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.

(8) **Small Wireless Facilities on Existing Water Reservoirs**

(A) Antennas must be mounted as close as possible to the side of the reservoir.

(B) No antenna or accessory equipment shall project above the top of the reservoir.

(C) Wires must be concealed within a shroud or conduit that is flush-mounted to the reservoir. The conduit and mounting hardware shall match the color of the reservoir.

(D) Antennas and antenna shrouds shall be painted to match the color of the reservoir.

(E) All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground equipment cabinets, if any, shall be dark green in color.

EXHIBIT B

THOUSAND OAKS POLICY REGULATING ELIGIBLE FACILITIES REQUESTS

(appears behind this cover)

THOUSAND OAKS POLICY REGULATING ELIGIBLE FACILITIES REQUESTS

SECTION 1. PURPOSE AND INTENT

(a) **Background.** Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) ("Section 6409"), generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communications Commission ("FCC") regulations interpret this statute and establish procedural rules for local review, which generally preempt certain subjective land use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 47 U.S.C. § 332, applies to only "personal wireless service facilities" (*e.g.*, cellular telephone towers and equipment), Section 6409 applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

(b) **Findings.** The City Council finds that the overlap between wireless deployments covered under Section 6409 and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. The City Council further finds that a separate permit application and review process specifically designed for compliance with Section 6409 contained in a separate section devoted to Section 6409 will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to maximum extent possible.

(c) **Intent.** The City Council intends this Policy ("Policy") to establish reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and California state law, for collocations and modifications to existing wireless facilities pursuant to Section 6409 and related FCC regulations codified in 47 C.F.R. §§ 1.6100 *et seq*. This Chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of

functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California state law.

SECTION 2. DEFINITIONS

(a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this Section 2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

(b) **Defined Terms.**

(1) "**approval authority**" means the City official responsible for reviewing applications for section 6409 approvals and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy.

(2) "**base station**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended or superseded. The term includes, but is not limited to, structures, other than towners, that support existing wireless communications facilities.

(3) "**collocation**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended or superseded. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.

(4) "**eligible facilities request**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded. An eligible facilities request is a request to modify an existing wireless facility pursuant to Section 6409 as defined herein.

(5) "**eligible support structure**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded.

(6) "**existing**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(5), as may be amended or superseded.

(7) "**FCC**" means the Federal Communications Commission or its duly appointed successor agency.

(8) "**FCC Shot Clock**" means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded.

(9) "**personal wireless services**" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

(10) "**personal wireless service facilities"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.

(11) "**RF**" means radio frequency or electromagnetic waves.

(12) "**Section 6409**" means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

(13) "**site**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended or superseded.

(14) "**substantial change**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended or superseded.

(15) "**tower**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded. Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.

(16) "**transmission equipment**" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

SECTION 3. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

(a) **Applicability.** Except as expressly provided otherwise in this Policy, all eligible facilities requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed and approved or denied without prejudice in accordance with the standards and procedures in this Section 3.

(b) **Section 6409 Eligible Facilities Request.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval of under Section 6409 shall require an approval of an eligible facilities request in such form determined by the approval authority consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station (each amendment a "section 6409 approval").

(c) **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this Policy may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation other any permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any section 6409 approval granted under this Policy shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

(d) **Approval Authority.** The approval authority shall be the Community Development Director or his/her designee for section 6409 approval applications involving sites located outside of public rights-of-way and the City Engineer for eligible facility requests for sites located within public rights-of-way.

SECTION 4. APPLICATIONS, SUBMITTALS AND COMPLETENESS REVIEW

(a) **Application Contents.** All applications for approval of a section 6409 eligible facilities request must include all the information and materials required in this Section 4.

(1) **Application Form.** The applicant shall submit a complete, duly executed wireless design review application on the then-current form prepared by the approval authority.

(2) **Application Fee.** The applicant shall submit the applicable eligible facilities request application fee established by City Council resolution.

(3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation all transmission equipment, support structures and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or

utility easements. The construction drawings must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iii) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

(4) **Site Survey.** For any application in connection with a wireless facility within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

(5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and the wireless facility before and after the collocation or modification. The photographs and photo simulations must show the wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

(6) **Project Narrative and Justification.** A written statement that explains in plain factual detail whether and why Section 6409 and the related FCC regulations at 47 C.F.R. §§ 1.6100 *et seq.* require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change

in height, width, excavation, equipment cabinets, concealment or permit compliance.

(7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the wireless facility proposed in the application.

(9) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed collocation or modification and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits

(b) **Requirements for a Duly Filed Application.** Any application for approval of section 6409 eligible facilities request will not be considered duly filed unless submitted in accordance with the requirements in this subsection (b).

(1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Applicants may generally submit one application per appointment. Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after the approval authority receives a written request. Any

application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

(2) **Pre-Submittal Conferences.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the approval authority for all collocations or modifications to any concealed or camouflaged wireless tower or base station. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

(c) **Application Completeness Review.** Within 30 calendar days after the approval authority receives a duly filed application, the approval authority shall review the application for completeness and, if any application does not contain all the materials required in subsection (a) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.

(d) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection (d), a “substantive response” must include the materials identified as incomplete in the approval authority’s notice.

(e) **Additional Requirements and Regulations.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed

under this Policy. The City Council further authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 5. DECISIONS AND APPEALS

(a) **Administrative Review.** The approval authority shall review a complete and duly filed application for approval of a section 6409 eligible facilities request and may act on such application without prior notice or a public hearing.

(b) **Decision Notices.** Within five days after the approval authority acts on an application for approval of a section 6409 eligible facilities request or before the FCC Shot Clock expires (whichever occurs first), the approval authority shall send a written notice to the applicant. In the event that the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.

(c) **Required Findings for Approval.** The approval authority may approve or conditionally approve an application any application for approval of a section 6409 eligible facilities request when the approval authority finds that the proposed project:

(1) involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and

(2) does not substantially change the physical dimensions of the existing wireless tower or base station.

(d) **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this Policy, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for approval of a section 6409 eligible facilities request when the approval authority finds that the proposed project:

(1) does not meet the findings required in subsection (c);

(2) involves the replacement of the entire support structure; or

(3) violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.

(e) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Section 5 is intended to limit the approval authority's authority to conditionally approve an application for a section 6409 eligible facilities request to protect and promote the public health and safety.

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

SECTION 6. STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the approval authority, all section 6409 eligible facilities request approvals, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 6. The approval authority (or the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Policy.

(a) **Permit Term.** The City's grant or grant by operation of law of a section 6409 eligible facilities request approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of this approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for this approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof. This condition shall not be applied or interpreted in any way that would cause the term of the underlying permit for the modified facility to be less than 10 years in total length.

(b) **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any eligible facilities request(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facilities requests or the approval authority grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the approval authority may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated eligible facilities request when it has obtained

the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.

(c) **City's Standing Reserved.** The City's grant or grant by operation of law of a section 6409 eligible facilities request approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any eligible facilities request.

(d) **Post-Installation Certification** Within 60 calendar days after the permittee commences full, unattended operations of the wireless facility, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.

(e) **Build-Out Period.** This approval will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. If this build-out period expires, the City will not extend the build-out period, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

(f) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

(g) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this approval, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the

Thousand Oaks Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Thousand Oaks Municipal Code, any permit, any permit condition or any applicable law or regulation.

(h) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Thousand Oaks Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority or designee may issue a stop work order for any activities that violates this condition in whole or in part.

(i) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee, or at any time during an emergency. The City's officers, officials, staff or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.

(j) **Permittee's Contact Information.** The permittee shall furnish the approval authority with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the approval authority with updated contact information in the event that either the responsible person or such person's contact information changes.

(k) **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages,

liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this approval, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this approval or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this approval, and that such indemnification obligations will survive the expiration or revocation of this approval.

(l) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this approval, the permittee shall post a performance bond from a surety and in a form acceptable to the approval authority in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the approval authority shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

(m) **Permit Revocation.** The approval authority may recall this approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this approval after notice and an opportunity to cure the violation is provided to the permittee. If the

noncompliance continues after notice and reasonable opportunity to cure the noncompliance, the approval authority may revoke this approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

(n) **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

(o) **Abandoned Wireless Facilities.** The wireless facility authorized under this approval shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Thousand Oaks Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities

(p) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless otherwise approved by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

ATTACHMENT #10

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS DECLARING INTENTION TO CONSIDER AMENDMENTS TO THE THOUSAND OAKS MUNICIPAL CODE AND RELATED RESOLUTIONS CONCERNING WIRELESS COMMUNICATIONS FACILITIES (MCA 2018-70719)

WHEREAS, on March 5, 2019, the Thousand Oaks City Council will consider adoption of an urgency ordinance regarding certain wireless communications facilities; and

WHEREAS, the urgency ordinance will allow the City to comply with an October 15, 2018, ruling by the Federal Communications Commission (FCC) that limits the authority of local agencies related to the deployment of small personal wireless facilities, including the amount of time to act on applications, design requirements and control over the use of public rights-of-way;

WHEREAS, an urgency ordinance is needed to move expeditiously to enact reasonable wireless regulations to the extent allowed by the FCC ruling;

WHEREAS, City Council also desires to initiate amendments to the Municipal Code and related policy resolutions to be processed through the standard process for such amendments set forth in the Municipal Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Thousand Oaks as follows:

Section 1: It is the intention of City Council to consider an amendment to the Thousand Oaks Municipal Code and related policy resolutions, including Resolution 97-197, to modify the procedures and requirements for approving wireless communications facilities.

Section 2: Changes to the City's wireless regulations are needed to allow advanced wireless services throughout the City while addressing community concerns, including, but not limited to, concerns about aesthetic character and adverse impacts on public rights-of-way.

Section 3: This amendment is hereby referred to staff for processing to the Planning Commission for public hearing and back to the City Council.

PASSED AND ADOPTED this 5th day of March, 2019.

Robert McCoy, Mayor
City of Thousand Oaks, California

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Patrick J. Hehir, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager