

## DRAFT WITH STAFF RESPONSES TO PUBLIC COMMENTS

Released February 5, 2015, with proposed changes to the version in the February 4, 2015 Planning Commission Agenda Packet, Item #5 marked.

This copy has responses to the Public Comments received by Friday, February 6, 2015, from Mr. Loebl, Mr. Quilici, Mr. Torres, and Council Member Weirick.

[Mr. Loebl]: a provision regarding prompt and effective notice of applications for wireless towers or modifications to existing towers must be included in the ordinance and the opportunity for community input.

**Comment [MTS1]:** [Summers] Language providing for public notice of all filed applications, at the time they are filed, by posting notice of filed applications on the City's website is added below.

Additionally, the Community Development Director's review of design review permits for wireless facilities could be held at a public hearing, with notice provided as required by the Government Code. Staff invites the Planning Commission's direction on this point.

### CITY OF OJAI ORDINANCE NO. \_\_\_\_\_

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OJAI, CALIFORNIA REPEALING TITLE 10, CHAPTER 10, ARTICLE 17, SECTION 1712 (TELECOMMUNICATION FACILITY STANDARDS), AND AMENDING TITLE 10, CHAPTER 14 OF THE OJAI MUNICIPAL CODE RELATED TO WIRELESS COMMUNICATIONS FACILITIES

**WHEREAS**, on the City Council of the City of Ojai adopted Telecommunication Facility Standards pursuant to its police powers to protect the public health, safety and welfare. Section 10-2.1712 of the City of Ojai Municipal Code currently governs the City's regulation of wireless communication facilities. Section 10-2.1712 sets forth policies and goals for the protection and promotion of the character of the City's residential and historic areas that are compatible with the City's unique character and in context with the surrounding environment and development;

**WHEREAS**, the existing regulations for wireless communications facilities are more than ten years old; and

**WHEREAS**, State and federal laws and regulations that govern local zoning standards and procedures wireless communications have substantially changed since the City adopted Section 10-2.1712; and

**WHEREAS**, the regulations in Section 10-2.1712 may not comply or may lead to noncompliance with other State and federal laws and regulations; and

**WHEREAS**, the City Council of the City of Ojai desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the City of Ojai community, to reasonably regulate wireless communication facilities aesthetics to protect and promote the unique City character in a manner consistent with State and federal laws and regulations; and

**Comment [MTS2]:** [Torres] Typo corrected.

**Comment [MTS3]:** [Summers] Accepted.

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**WHEREAS**, on \_\_\_\_\_, 2015, the City Council conducted a lawfully-noticed public hearing and received the report and recommendation of the Planning Commission regarding the Ordinance which modifies the code sections relating to wireless communications facilities; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Environmental Determination. The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that Text Amendment TA 14-01 is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines 15061(b)(3) and 15378(b)(5) for the following reasons:

- (a) **CEQA Guidelines Sections 15061(b)(3).** The City finds that the proposed Text Amendment 14-01 is exempt from CEQA review because there is no possibility that this text amendment to the zoning regulations, which does not directly authorize any new construction or development, may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. Text Amendment TA 14-01 does not authorize any new construction or development; it clarifies and better-articulates the already-existing standards for how the City reviews proposals to construct or modify wireless communications facilities. Each proposed wireless communication facility governed under the proposed ordinance will receive individualized CEQA review unless exempt under CEQA or preempted under federal law. Accordingly, the City finds that Text Amendment TA 14-01 is exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that it will have a significant effect on the environment.
- (b) **CEQA Guidelines Section 15378(b)(5).** The City finds that the regulations related to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 do not qualify as a “project” under CEQA Guidelines Section 15378(b)(5) because they merely create an administrative internal process to determine whether federal law mandates that the City “shall approve, and may not deny” a wireless permit application. Section 6409(a) requires that State and local governments “may not deny, and shall approve” any “eligible facilities request” for collocation or modification of wireless transmission equipment so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.” Under CEQA Guidelines Section 15378(b)(5), a “project” does not include “administrative activities of governments that will not result in direct or indirect physical changes in the environment.”

Firstly, regulations in the ordinance relation to Section 6409(a) constitute “administrative activities” of government because they create internal, ministerial procedures to identify when federal law preempts local zoning discretion.

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Secondly, regulations in the ordinance related to Section 6409(a) will not “result in direct or indirect physical changes in the environment” because federal regulations deem-granted all permit applications for the collocation or modification of existing wireless towers and base stations so long as such collocation or modification does not substantially change the physical dimensions of the wireless tower or base station. Any physical changes in the environment will therefore “result” whether the City adopts the regulations or not.

Accordingly, the City finds that the regulations related to Section 6409(a) in Text Amendment TA 14-01 do not qualify as a “project” under CEQA Guidelines Section 15378(b)(5) because it constitutes administrative activities of government that do not directly or indirectly result in any physical changes in the environment.

**SECTION 2.** Title 10, Chapter 10, Article 17, Section 10-2.1712 of the Ojai Municipal Code is hereby repealed.

**SECTION 3.** Title 10, Chapter 14 of the Ojai Municipal Code is hereby amended to read as follows:

### **Chapter 14**

#### **Wireless Communication Facilities**

##### **Sections:**

<b>Sec. 10-14.010</b>	<b>Purpose.</b>
<b>Sec. 10-14.020</b>	<b>Definitions.</b>
<b>Sec. 10-14.030</b>	<b>Applicable facilities.</b>
<b>Sec. 10-14.040</b>	<b>Application procedures in general.</b>
<b>Sec. 10-14.050</b>	<b>Regulations for facilities subject to a conditional use permit.</b>
<b>Sec. 10-14.060</b>	<b>Regulations for facilities subject to a design review permit.</b>
<b>Sec. 10-14.070</b>	<b>Independent consultant review.</b>
<b>Sec. 10-14.080</b>	<b>Maintenance.</b>
<b>Sec. 10-14.090</b>	<b>Removal of abandoned facilities.</b>
<b>Sec. 10-14.100</b>	<b>Ownership transfers.</b>
<b>Sec. 10-14.110</b>	<b>Permit terms; permit conditions.</b>
<b>Sec. 10-14.120</b>	<b>Exception from standards.</b>
<b>Sec. 10-14.130</b>	<b>Conflicts with other ordinances or regulations.</b>
<b>Sec. 10-14.140</b>	<b>Severability.</b>

##### **Sec. 10-14.010      Purpose.**

(a) The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Ojai community, and to reasonably

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regulate the development and operation of wireless communication facilities within the City to the extent permitted under state and federal law.

- (b) This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the City, its residents, businesses, and community at large.
- (c) The regulations in this City are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission hereinafter also referred to as ("FCC").
- (d) This chapter shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

### Sec. 10-14.020 Definitions.

(a) **“base station”** means the equipment and non-tower supporting structure at a fixed location that enable CommissionFCC-licensed or authorized wireless communications between user equipment and a communications network.

(a)(b) **“collocation”** means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(b)(c) **“Director”** means the City of Ojai Community Development Director, or designee of the Director.

(c)(d) **“equipment cabinet”** means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

(d)(e) **A-“non-tower support structure”** means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

(e)(f)

**Comment [O4]:** [Quilici] If you spell out and introduce FCC at its first appearance, here, then you can use "FCC" thereafter. It saves space, and also makes clear you're talking about the Federal entity, not the Ojai Planning Commission.

**Comment [O5]:** [Quilici] There are several places throughout the Ordinance where "Commission" is used without identifying which Commission (FCC or Ojai PC) is meant. I have made suggested changes wherever "Commission" was used either to shorten to FCC or to preface with Planning, as I thought correct. Please review those to make sure I guessed correctly in each case.

**Comment [MTS6]:** [Summers] Accepted.

**Comment [MTS7]:** [Summers] Accepted.

**Comment [JWL8]:** [Loebel] This is a separate definition and should therefore be separated from the previous definition.

**Comment [MTS9]:** [Summers] Accepted.

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(f)(g) ***“transmission equipment”*** means any equipment that facilitates transmission for any ~~CommissionFCC~~-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

**Comment [MTS10]:** [Summers] Accepted.

(g)(h) ***“wireless”*** means any ~~CommissionFCC~~-authorized wireless communications service.

**Comment [MTS11]:** [Summers] Accepted.

(h)(i) ***“wireless communication facility”*** or ***“wireless facility”*** or ***“facility”*** means any facility that transmits and/or receives electromagnetic waves, including, but not limited to commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures supporting said equipment, equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas, ~~security barriers, electrical lines~~, and other accessory development. The term also means any facility or transmission equipment used to provide any ~~CommissionFCC~~-authorized wireless communications service including but not limited to personal wireless services defined by the Telecommunications Act of 1996 and licensed by the ~~Federal Communications CommissionFCC~~, including but not limited to, the types commonly known as cellular, personal communications services (“PCS”), specialized mobile radio (“SMR”), enhanced specialized mobile radio (“ESMR”), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems (“DAS”) and similar systems.

**Comment [MTS12]:** [Summers] Security barriers should be excluded because it expand the meaning of wireless facility beyond the limits of the wireless facility itself. Similarly, adding electrical lines would extend the facility's definition to include the electrical lines maintained by the utility, over which the City has a different regulatory power.

**Comment [MTS13]:** [Summers] Accepted.

**Comment [MTS14]:** [Summers] Accepted.

(i)(j) ***“wireless tower”*** means any structure built for the sole or primary purpose of supporting any ~~CommissionFCC~~-licensed or authorized antennas and their associated facilities.

**Comment [MTS15]:** [Summers] Accepted.

### Sec. 10-14.030 Applicable facilities.

This section applies to all wireless facilities and transmission equipment as follows:

(a) ***New facilities.*** All permit applications received after the effective date of this chapter must comply with this chapter.

**Comment [MTS16]:** [Summers] Accepted.  
**Comment [MTS17]:** [Summers] Added for clarity.

(b) ***Changes to existing facilities.*** All permit applications ~~to which~~ in any manner whatsoever ~~seek approval to~~ modify a previously approved ~~facilities facility~~ received after the effective date of this chapter must comply with this chapter. ~~This chapter is not intended to apply to routine maintenance and repair.~~

**Comment [MTS18]:** [Summers] Mr. Torres proposed this sentence. I recommend rejection because there is no clear or precise definition for “routine maintenance and repair” means. If routine maintenance and repair entails modifying any aspect of the facility as originally approved, then that must be reviewed by the city for conformity with the ordinance. If not, then the routine maintenance and repair would not constitute modification and would not trigger a permit application requirement. If an exception for routine maintenance and repair is added, it opens the door to routine maintenance being extended to include additions to the facility.

(c) ***Exemptions.*** This section shall not apply to:

(1) The City of Ojai municipal wireless communications facilities.

(2) ***Amateur Radios.*** This section shall not govern any amateur radio facility that is under seventy (70) feet in height and is owned and operated by a Federally-

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licensed amateur radio station operator or is used exclusively for receive-only antennas.

(3) *Over the air receiving devices.* This section shall not govern any over-the-air receiving-devices, as defined by the FCC at 47 C.F.R. § 1.4000, with a maximum diameter of one (1) meter (thirty-nine (39) inches) for residential installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the ~~Federal Communications—Commission~~<sup>FCC</sup> and the California Public Utilities Commission ~~(hereinafter referred to as the "CPUC")~~ regulations.

**Comment [MTS19]:** [Summers] Accepted.  
**Comment [MTS20]:** [Summers] Accepted.

### Sec. 10-14.040 Application procedures in general.

(a) *Permits.* All new facilities and collocations or modifications to existing facilities shall require a permit in accordance with this chapter.

(1) *Conditional use permit, and design review permit.* All new facilities, and collocations or modifications to existing facilities that do not meet the findings of approval for a design review permit in Section ~~10-14.060, subdivisions (d-f)~~, shall be subject to the approval of a conditional use permit in compliance with Article 24 of Chapter 2, ~~and subject to the approval of a design review permit in compliance with Article 20 of Chapter 2.~~

(2) *Design review permit.* All collocations or modifications to existing facilities that meet the findings of approval for a design review permit in Section ~~10-14.060, subdivisions (d-f)~~, shall be subject to a design review permit in compliance with Article 20 of Chapter 2.

(3) *Other required permits and approvals.* In addition to any conditional use permit or design review permit required under this section, an applicant must also apply for and obtain any separate permit or approval required for such telecommunication facility under the City's municipal code, including but not limited to building, electrical, and encroachment.

(b) *Permit submittal.* All permit applications shall be submitted by the applicant, in-person, at a prior-scheduled appointment with City staff ~~from the~~<sup>with</sup> all departments that require a permit or other approval for the proposed project, ~~and with the Mayor.~~ ~~The City shall endeavor to make appointment times available within five business days of request.~~ The applicant should be prepared to discuss the proposed change and answer questions from staff members to help facilitate the expedited review by all appropriate departments. No permit application may be submitted in any other manner, and the acceptance of a permit application or any partial permit application shall not constitute a waiver of the requirements under this section. Applicants may submit supplemental information to a submitted permit application without an appointment. ~~The Director may waive the required appointment in a signed writing.~~ ~~The Director may propose waiving the~~

**Comment [MTS21]:** [Summers] Council Member Weirick proposed this addition. I recommend not adding this language. The Mayor should not participate in the initial meeting with the applicant because he or she may later vote on the application, if it is appealed to the City Council. If the Mayor offers an early opinion on the project, an applicant could raise a common law bias challenge if the Mayor's initial comments indicated that he or she had pre-decided the matter. If the initial meeting is limited to staff, then this concern is avoided.

**Comment [MTS22]:** [Summers] Mr. Torres proposed this language. Accepted, with the addition of "endeavor" and "business" to "five days."

**Comment [JWL23]:** [Loeb] Why permit this waiver? It will result in unequal treatment of applicants and create a different procedures for different applicants.

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required appointment in a signed writing, with notice to the City Manager and all members of City Council, which shall only go into effect after five business days without written objections from at least two City Council members.

(c) *Incomplete application notices.* In the event that City staff determines that a permit application does not contain all the required materials, City staff may issue an incomplete notice consistent with this subsection:

- (1) City staff may toll the time for review only when it issues an incomplete notice within the first thirty (30) days after a permit application is submitted, and only when the incomplete notice specifies the incomplete or missing information and the publicly available information source that requires that missing or incomplete information. City staff may issue an incomplete notice after the first thirty (30) days, but it will not toll the time for review.
- (2) After an applicant responds to an incomplete notice, City staff may toll the time for review when it issues a subsequent incomplete notice within ten (10) days after the applicant's response (even when the first thirty (30) day period has elapsed); provided, however, that the subsequent incomplete notice cannot toll the time for review based on an issue not cited in the first incomplete notices.

(d) Public notice of applications deemed otherwise complete shall be made following procedures proposed by the City Manager and approved by Council, in addition to posting notice of completed applications on the City's website. An application will not be considered complete until public notice following approved procedures has been posted.

### Sec. 10-14.050 Regulations for facilities subject to a conditional use permit.

(a) Conditional use permit application materials. Unless the Director waives the requirement in a signed writing, all design reviewconditional use permit applications must include the materials as follows: The Director may propose waiving an application requirement in a signed writing, with notice to the City Manager and all members of City Council, which shall only go into effect after five business days without written objections from at least two City Council members.

- (1) *Application fee.* An application fee as the City may establish from time-to-time to reimburse the City for its costs to review the permit application.
- (2) *Independent consultant deposit.* An independent consultant deposit, if required, as the Director may establish from time-to-time to reimburse the City for its costs to retain an one or more independent consultants to review the design review permit application.
- (3) *Site plans.* Complete and accurate construction-quality plans drawn to scale, prepared, and signed and sealed by a California-licensed engineer, land surveyor

**Comment [MTS24]:** [Summers] Council Member Weirick proposed this language. I recommend not adding this language. As with the proposal for the Mayor's participation in the application submittal meeting, having the Council involved at the early stage of the planning process, when the application may later be before the Council on appeal, creates potential bias issues. The Council should not get involved in the processing of an individual application until the application comes before the Council.

**Comment [MTS25]:** [Summers] Council Member Weirick proposed this language. Accepted, as modified to reflect federal law, which does not allow completeness to depend on the status of public notice. This language will ensure that the public receives notice of applications.

**Comment [W26]:** [Weirick] Again, the Director cannot have the authority to vacate legislative stipulations without a proposed waiver period which can be rejected by registered objections of at least two Council members.

**Comment [MTS27]:** [Summers] As above, I recommend not adding this language, because it involves the Council in the initial exercise of discretion for a particular application, before the application is before the Council.

**Comment [JWL28]:** [Loeb] This is a confusing construction. Should not the Director publish a fee/deposit schedule from time to time? "Establish" is vague and not consistent with the rest.

**Comment [MTS29]:** [Summers] The City has a fee schedule published per Section 10-2.1805. Here, "establish" means that the Director may set the amount of the deposit an applicant must submit. The waiver provision allows the Director to modify the requirement for an initial deposit in appropriate cases. The Director cannot waive the requirement to pay for the independent consultant's services, which must be paid before the City will act on the permit, per Section 10-14.070, subd. (c) below.

**Comment [JWL30]:** [Loeb] This paragraph should track the same language of (c)(3) on page 13

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and/or architect, including (1) plan views and all four elevations before and after the proposed construction with all height and width measurements called out; (2) a depiction of all proposed transmission equipment; and (3) a depiction of all proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights-of-way and/or easements for access and utilities in plan view.

(4) Site plans. Complete and accurate construction-quality plans drawn to scale, prepared and signed by a licensed engineer, including (1) plan views and all four elevations before and after the proposed construction with all height and width measurements called out; (2) a depiction of all existing and proposed transmission equipment; (3) a depiction of all existing and proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights of way and/or easements for access and utilities in plan view. For wireless towers, the plans must include sealed plan views and all four elevations that depict the physical dimensions of the wireless. For base stations, the plans must include sealed plan views and all four elevations that depict the physical dimensions of the base station as originally constructed.

(3)(5) Visual analysis. A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) if available, a photograph of a completed facility of the same or similar the same similar design and in roughly the same setting as the proposed wireless communication facility, or a statement that no such completed facility exists.

(4)(6) Statement of Purpose. A clear and complete written Statement of Purpose shall minimally include: (1) a description of the technical objective to be achieved; (2) an annotated topographical a to-scale map that identifies the proposed site location and the targeted service area to be benefitted by the proposed project; (3) the estimated number of users in the targeted service area; and (4) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. Propagation maps shall not be required for sites designed to improve capacity, as set forth in the technical objective.

(5)(7) Design justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete Design Justification must identify all applicable design standards under this chapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

**Comment [MTS31]:** [Summers] Mr. Loeb proposed deleting this and replacing it with the same language as Section 10-14.060, subd. (c)(3). I recommend keeping the original language, as modified to require more detail. The language is different because an application for a facility potentially protected by Section 6409 must depict what was originally approved, to evaluate whether Section 6409 applies. This is not needed for a new facility or non-Section 6409 modification. Further, the distinction between wireless towers and base stations, is not relevant for a non-Section 6409 application.

**Comment [JWL32]:** [Loeb] New construction should require the same amount, or more detail than the proposed changes to an existing tower.

**Comment [MTS33]:** [Summers] Mr. Torres proposed "the same or similar" and "if available" addition. I recommend rejection of that and instead revising the requirement to read "(3) A photograph of a completed facility of the same or similar design and in roughly the same setting as the proposed wireless communication facility, or a statement that no such completed facility exists."

**Comment [MTS34]:** [Torres] Number of users is proprietary information.

**Comment [MTS35]:** [Summers] Mr. Torres proposed deleting this language, claiming that this is proprietary information. An estimate of the number of users is not proprietary.

**Comment [MTS36]:** [Summers] Mr. Torres proposed this language. I recommend rejection. The Telecom Act's protections for facilities that are the least intrusive means to close a significant gap in coverage does not extend to facilities intended to increase capacity. Any such facility must still submit propagation maps, as the City must evaluate whether federal law requires approval.

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(6)(8) *Alternative sites analysis.* A clear and complete written alternative sites analysis that shows at least five two (52) technically feasible and potentially available alternative sites considered, including any potential sites outside the City, together with a factually detailed and meaningful comparative analysis between each~~the~~ alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate. A complete alternative sites analysis may include less than five two (52) alternative sites so long as the applicant provides a factually detailed written rational for why it could not identify at least five two (52) technically feasible and potentially available alternative sites.

**Comment [W37]:** [Weirick] Available should be defined as including sites outside city limits which include meeting county regulations and having a willing property owner. Perhaps put this definition in the "definitions" section

(7)(9) *Radio frequency emissions compliance report.* A written report, prepared by a qualified engineer, that which assesses whether the proposed wireless communication facility demonstrates planned compliance with the Uncontrolled/General Population exposure limits established with all maximum permissible exposure limits established by the Federal Communications Commission~~FCC~~. The report shall also include a cumulative analysis that accounts for all emissions from all wireless communications facilities located on or adjacent to the proposed site, identifies the total exposure from all facilities, and demonstrates planned compliance with all maximum permissible exposure limits established by the Federal Communications Commission~~FCC~~. The report shall include a detailed description of all mitigation measures required under the Federal Communications Commission~~FCC~~.

**Comment [MTS38]:** [Summers] I recommend rejection of this proposed addition because the City has no authority over sites outside the City.

**Comment [JWL39]:** [Loeb] Every alternative candidate should be compared to each other and the preferred one.

**Comment [MTS40]:** [Summers] Accepted.

**Comment [MTS41]:** [Torres] It is very rare that an applicant can identify five technically feasible alternatives in Ojai.

**Comment [MTS42]:** [Summers] Mr. Torres proposed this change, to only require two alternatives. I recommend rejection for two reasons. First, an applicant can submit alternative sites that are in the county. Two, in an appropriate case, the Director could require fewer alternative sites, per the waiver provision above, if not objected to by the Council.

**Comment [MTS43]:** [Summers] Modified to reflect correct FCC standard.

**Comment [MTS44]:** [Summers] Accepted.

**Comment [MTS45]:** [Summers] Accepted.

**Comment [MTS46]:** [Summers] Accepted.

**Comment [JWL47]:** [Loeb] The noise ordinance should be amended to reflect the need to judge noise in the quiet of the night, not by day.

**Comment [MTS48]:** [Summers] Staff will evaluate amendments to the noise ordinance.

(8)(10) *Structural analysis.* A structural analysis, prepared, signed and sealed by a California-licensed by a qualified independent engineer, that which assesses whether the proposed wireless communication facility demonstrates planned compliance with all applicable building codes.

(9)(11) *Noise study.* A noise study, prepared, signed and sealed by a California-licensed engineer prepared and sealed by a qualified engineer, for the proposed wireless communications facility and all associated equipment, which shall include without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The noise study shall include without limitation the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

(10)(12) *Collocation consent.* A written statement, signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

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(+) (13) *Other published materials.* All other information and/or materials that the City may, from time-to-time, make publicly available and designate as part of the application requirements.

(b) Guidelines and standards in general.

(1) *Location guidelines.*

(A) *Collocation preference.* Applicants shall collocate with existing facilities to the extent feasible.

(B) *Preferred locations.* To minimize aesthetic and visual impacts and to the maximum extent feasible, all new telecommunication facilities shall be located according to the following preferences, ordered from most-preferred to least-preferred:

- (i) parcels owned or controlled by the **City**;
- (ii) parcels owned or controlled by other governmental entities;
- (iii) parcels principally used as a golf course;
- (iv) parcels or rights of way in agricultural zones;
- (v) parcels or rights-of-way in industrial zones;
- (vi) parcels or rights-of-way in commercial zones;
- (vii) parcels or rights-of-way in open space zones; and
- (viii) parcels or rights-of-way in residential zones.

(C) *Exception for facilities proposed based on proximity to residential uses.* Notwithstanding the preferences listed in Section ~~—10-14.050(b)(1)(B)~~, a proposed facility ~~in a less preferred location shall always be more preferred over a facility affecting view lines within one hundred (500) feet from a residential use measured from the nearest point of the proposed facility to the property line of the parcel with the residential use structure, within three hundred (300) feet from a residential use measured from the nearest point of the proposed facility to the property line of the parcel inclusive of the residential use shall be defined as a least preferred location.~~

(D) *Most strongly disfavored locations.* No facility shall be permitted or constructed in a location where it would:

**Comment [JWL49]:** [Loeb] Vague

**Comment [MTS50]:** [Summers] This language provides that any item required in a publicly available writing, such as the City's website, must be included as well. I've modified it for clarity. The intent is to allow updates to the application materials, without needing to amend the ordinance itself.

**Comment [W51]:** [Weirick] This hierarchy does not appear to reflect the particular topography of Ojai. I suggest an alternative hierarchy in order of most preferred to least preferred: (iv), (v), (i), (iii), (v), (vi), (vii), (viii).

**Comment [MTS52]:** [Summers] The order is up to the Commission's discretion as a recommendation to the Council.

**Comment [MTS53]:** [Torres] Please note that under the Government Code, the locality may not require that applicants use property owned by a particular entity.

**Comment [MTS54]:** [Summers] In response to Mr. Torres' comment, the proposed hierarchy of preferred locations, does not require the use of the City's parcels. Rather it states a preference.

**Comment [MTS55]:** [Summers] Council Member Weirick, Mr. Loeb, and Mr. Torres proposed modifications to this section. I recommend rejecting the "affecting view lines" and "structure" additions proposed by Mr. Torres. The Commission must decide what distance to recommend, whether to accept Council Member Weirick's recommendation to declare sites within 300' of residential uses the least preferred location, and whether to prefer smaller, less obtrusive facilities.

**Comment [MTS56]:** [Torres] This will essentially bar use of the public-right-of-way, in violation of CPUC 7901. At the very least, any setback should be from the actual residential structure rather than property line. The restriction here is clearly based upon fear of RF emissions.

**Comment [MTS57]:** [Summers] The suggestion that this provision is based upon fear of RF emissions is false. The City's intent in adopting a preference for locations not near residential uses reflects the community's strong aesthetic preferences and the City's desire to reduce the aesthetic impacts from cellular towers to the maximum extent permissible under federal law and PUC [1]

**Comment [JWL58]:** [Loeb] This should be amended to give preference to smaller, less obtrusive sites over larger, more powerful towers

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- (i) extend above a ridgeline;
- (ii) ~~materially and adversely~~ impact a scenic viewshed;
- (iii) ~~impacts require the removal or relocation of~~ a protected tree; or
- (iv) ~~impacts be on the same parcel~~ as a landmark property.
- (v) ~~watershed and seasonal springs.~~

(2) *Stealth and concealment techniques.* All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and/or structures. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened with concrete walls ~~meeting the requirements of Sec. 10-2.805(f)(2) or wooden fences~~ not less than six (6) feet above ground. No barbed wire, razor wire, or other such similar fences shall be permitted; chain link fences may be permitted only when completely concealed from public view. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible. ~~Stealth and concealment techniques do not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees. Stealth and concealment techniques do not include is not incorporating fake trees of a kind different than the surrounding trees.~~

(3) *Landscaping.* All facilities shall include a landscaped buffer at least four (4) feet wide outside the perimeter of the ground-mounted equipment. All landscaping shall be maintained in accordance with Article 12 of this chapter. The ~~Planning~~ Commission may increase, reduce, or waive the required landscaping when it finds that a different requirement would better serve the public interest.

(4) *Height.* All new facilities and substantial changes to existing facilities shall comply with the applicable zone height ~~limit as specified in Title 10, Chapter 2 of this Code, except where height increases are needed to achieve adequate signal propagation over roofs, trees, and similar obstacles.~~

(5) *Setbacks.* All new facilities and substantial changes to existing facilities shall comply with ~~all the~~ applicable setback requirements ~~as specified in Title 10, Chapter 2 of this Code.~~

(6) *Lights.* Unless otherwise required under Federal Aviation Administration (“FAA”) regulations, applicants shall install only timed or motion-sensitive lights and design all lights associated with the wireless communication facility ~~so as to avoid “light spillage” onto adjacent properties~~ in accordance with Article 16.5 of ~~this chapter~~.

**Comment [MTS59]:** [Summers] I added “materially” to ensure that a denial for adverse scenic impacts is based on material adverse impacts, in line with the City’s discretion to prevent aesthetic impacts.

**Comment [JWL60]:** [Loeb] There are some areas that have water at certain times of the year.

**Comment [MTS61]:** [Summers] I believe Mr. Loeb is suggesting the addition of a provision disfavoring sites on parcels with springs. I recommend rejection of this proposed addition. CEQA analysis is the appropriate vehicle to evaluate specific watershed impacts.

**Comment [MTS62]:** [Summers] Council Member Weirick proposed this language. Accepted.

**Comment [JWL63]:** [Loeb] Does this mean that the fence may exceed the restrictions applicable in other City ordinances?

**Comment [MTS64]:** [Summers] The current recommendation is to require screening walls to be six feet high, which may exceed other fence height restrictions.

**Comment [MTS65]:** [Summers] Mr. Loeb proposed adding this language. Accepted, as modified.

**Comment [MTS66]:** [Summers] Accepted.

**Comment [MTS67]:** [Summers] Accepted.

**Comment [MTS68]:** [Summers] Mr. Torres proposed adding this language. I recommend rejection. The height limits should be absolute. If a particular facility can prove it needs to be higher to be the least intrusive means to close a significant gap, then that could be approved; but a blanket exemption for signal propagation needs is unwarranted.

**Comment [MTS69]:** [Summers] Accepted.

**Comment [JWL70]:** [Loeb] The AT&T application provided for full time security lights. Would those be permitted?

**Comment [MTS71]:** [Summers] By requiring lights to be on a timer or motion-sensor, lights that are always on are prohibited.

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- (7) *Noise.* At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in Title 5, Chapter 11 of this Code.
- (8) *Signage.* No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.
- (9) *Code compliance.* All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.

(c) *Guidelines and standards specific to wireless towers.*

- (1) To minimize aesthetic and visual impacts, all new wireless towers shall be designed in accordance with the preferred designs, ordered from most-preferred to least-preferred, as follows:
  - (A) new freestanding architectural feature (e.g., faux clock tower, water tank, flagpole, etc.);
  - (B) public art installation; and
  - (C) false tree compatible to the maximum extent possible with surrounding foliage and natural environment
- (2) All wireless towers shall be designed and situated in a manner that utilizes existing natural or man-made features (including but not limited to topography, vegetation, buildings, or other structures) to visually conceal the wireless tower to the maximum extent feasible.
- (3) All tower-mounted transmission equipment shall be mounted as close as possible to the tower so as to reduce the overall visual profile to the maximum extent feasible.

(d) *Guidelines and standards specific to base stations.*

- (1) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible.
- (2) All new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.

**Comment [MTS72]:** [Summers] I recommend rejection of this addition proposed by Mr. Loebel because it is inconsistent with Section 10.14.050(b)(2), which requires that false trees, if used, be substantially compatible with the surrounding environment, taking into account the unique facts of each site.

**Comment [JWL73]:** [Loebel] The word maximum is inserted as it is in (d)(3).

**Comment [MTS74]:** [Summers] Accepted.

**Comment [MTS75]:** [Summers] Accepted.

**Comment [MTS76]:** [Summers] Accepted.

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(3) All transmission equipment shall be mounted at the lowest height and set back from the roofline to maximum extent feasible.

(e) *Guidelines and standards specific to facilities in the public right-of-way.*

(1) *Preferred locations.* Facilities shall be located as far from residential uses as feasible, and on arterial and collector streets to the extent feasible. Where feasible, facilities in the rights-of-way shall maintain at least a five-two hundred (500200) foot setback from other facilities, except when collocated or on opposite sides of the same street.

(2) *Undergrounded equipment.* All non-antenna equipment shall be installed underground or screened to the maximum extent feasible. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to maximum extent feasible.

(3) *Pole-mounted or tower-mounted equipment.* All pole-mounted and tower-mounted transmission equipment shall be mounted as close as possible to the tower so as to reduce the overall visual profile to the maximum extent feasible. All pole-mounted and tower-mounted transmission equipment shall be painted with flat, non-reflective colors that blend with the visual environment. No portion of the antenna or transmission equipment mounted on a pole may be less than sixteen (16) feet above any road surface unless certain equipment must be placed lower in order to comply with California Public Utilities Commission General Order 95.

**Comment [MTS77]:** [Torres] We have learned that carriers often encounter similar signal coverage or capacity issues along the same stretches of roadway, and so this separation requirement may not be workable. 500 feet is excessive.

**Comment [MTS78]:** [Summers] I recommend rejecting the "where feasible" addition, because requiring an absolute setback is within the City's power. It forces carriers to either collocate, thereby reducing impacts from multiple facilities, or else spread out their facilities, thereby reducing aesthetic impacts. The Planning Commission has discretion to set the setback distance requirement.

**Comment [MTS79]:** [Summers] Mr. Torres proposed adding this language. This is a discretionary point, but I recommend ejecting the addition, since the goal for this section is for as much equipment as feasible to be underground, rather than merely screened.

**Comment [MTS80]:** [Summers] Mr. Torres proposed this addition. It is acceptable, as modified for clarity with the addition of California Public Utilities Commission.

(f) *Applicable criteria for conditional use permit approval.* In addition to all the guidelines and standards contained in this section, the Planning Commission may specifically consider the following factors in determining whether to issue a conditional use permit, although the Planning Commission may waive or reduce the burden on the applicant of one (1) or more of these criteria if the Planning Commission concludes that the goals of this chapter are better served by the waiver:

- (1) Height of the proposed facility;
- (2) Proximity of the facility to residential structures and residential district boundaries;
- (3) Nature of uses on adjacent and nearby properties;
- (4) Surrounding topography;
- (5) Surrounding tree coverage and foliage;

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- (6) Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (7) Proposed ingress and egress; and
- (8) Availability of existing facilities for collocation and/or other existing structures.
- (9) Alternative sites listed by Applicant
- (10) Wildlife, water and ecology

### Sec. 10-14.060 Regulations for facilities subject to a design review permit.

#### (a) Purpose and intent.

- (1) Under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, State and local governments “may not deny, and shall approve” any “eligible facilities request” so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.” *See* 47 U.S.C. § 1455(a) (2013). A permit application subject to Section 6409(a) is referred to as a “covered request.”
- (2) On December 17, 2014, the Federal Communications Commission FCC adopted a report and order that interpreted Section 6409(a) to limit local discretion over wireless permit applications that qualified under the statute as a covered request. Among other things, the Commission FCC specifically limited the kinds of information localities could solicit in permit applications, defined “substantially change the physical dimensions” to include objective thresholds under a cumulative limit, and enacted a rule that “deemed-granted” any covered request when the local reviewing authority fails to act within sixty (60) days after the application is submitted. The Commission FCC codified its rules to interpret Section 6409(a) at 47 C.F.R. §§ 1.40001 *et seq.*
- (3) The purpose of this subsection is to promote and protect the public health, safety and welfare. This ordinance does so by setting forth standards and processes taken from Section 6409(a) and the Commission’s FCC’s rules for the submittal, review, and action upon a permit application.
- (4) This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, and the applicable Federal Communication Commission FCC and court decisions and determinations relating to same.
- (4)(5) In the event that a court of competent jurisdiction issues a final ruling invalidating Section 6409, then all proposed modifications to existing facilities subject to this

**Comment [JWL81]:** [Loeb] The Planning Commission should have the opportunity to review the proposed alternative sites to determine if one would be more appropriate. The selection should be done in public by the Commission and not in secret by City staff.

**Comment [MTS82]:** [Summers] Accepted.

**Comment [JWL83]:** [Loeb] The environment should be one of the criterion considered

**Comment [MTS84]:** [Summers] I recommend not adding this subsection (10), because the City is already required to consider the full range of potential environmental impacts via CEQA.

**Comment [MTS85]:** [Summers] Accepted.

**Comment [MTS86]:** [Summers] I added this subsection in response to Council Member Weirick’s last comment below, #131.

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Section 10-14.060 must be approved by a conditional use permit under Section 10-14.050.

(b) *Time for review.* Federal regulations provide that the City must approve or deny on a design review permit application, and all other required permits and approvals, within sixty (60) days after the applicant submits the permit application, unless tolled due to an incomplete notice or a mutual agreement to extend the time. Under federal regulations, failure to act upon a design review permit, and all other required permits and approvals, within sixty (60) days will result in a “deemed-granted” permit.

(c) *Design review permit application materials.* Unless the Director waives ~~the requirement in a signed writing, all design review permit applications must include the materials as follows. The Director may propose waiving an application requirement in a signed writing, with notice to the City Manager and all members of City Council, which shall only go into effect after five business days without written objections from at least two City Council members.~~

- (1) *Application fee.* An application fee as the City may establish from time-to-time to reimburse the City for its costs to review the permit application.
- (2) *Independent consultant deposit.* An independent consultant deposit, if required, as the Director may establish from time-to-time to reimburse the City for its costs to retain an independent consultant review the design review permit application.
- (3) *Site plans.* Complete and accurate construction-quality plans drawn to scale, including (1) plan views and all four elevations before and after the proposed change with all height and width measurements called out; (2) a depiction of all existing and proposed transmission equipment; (3) a depiction of all existing and proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights-of-way and/or easements for access and utilities in plan view. For wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012 or the date of the original facility, whichever is later. For base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as originally constructed.
- (4) *Visual analysis.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (5) *Narrative.* A written narrative that explains in explicit factual detail why the applicant believes that Section 6409(a) governs the proposed change permit

**Comment [W87]:** [Weirick] Any and all references to “Director waives” will have to include a noticed proposal waiver period which can be rejected by objections from at least two Council members.

**Comment [MTS88]:** [Summers] As above, I recommend not adding this language, because it involves the Council in the initial exercise of discretion for a particular application, before the application is before the Council.

**Comment [MTS89]:** [Summers] Mr. Torres proposed adding this language. Accepted.

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request. The narrative should identify each required finding of approval under the applicable section of this chapter for the proposed change and explain what facts allow the Director to affirmatively make each finding.

(6) *Prior permits.* True and correct copies of all previously issued permits, together with all conditions of approval, together with a written statement from the applicant that certifies the proposal will not violate any applicable permit or condition of approval.

(7) *Radio frequency emissions compliance report.* A written report, prepared by a qualified engineer, ~~that which~~ assesses whether the proposed wireless communication facility demonstrates planned compliance with ~~the Uncontrolled/General Population exposure all maximum permissible exposure~~ limits established by the ~~Federal Communications Commission~~<sup>FCC</sup>. The report shall also include a cumulative analysis that accounts for all emissions from all wireless communications facilities located on or adjacent to the proposed site, identifies the total exposure from all facilities, and demonstrates planned compliance with ~~the Uncontrolled/General Population exposure limits established all maximum permissible exposure limits established by the Federal Communications Commission~~<sup>FCC</sup>. The report shall include a detailed description of all mitigation measures required under the ~~Federal Communications Commission~~<sup>FCC</sup>.

(8) *Structural analysis.* A structural analysis, prepared signed and sealed by a ~~qualified independent California-licensed~~ engineer, ~~that which~~ assesses whether the proposed wireless communication facility demonstrates planned compliance with all applicable building codes.

(9) *Noise study.* ~~Where the proposed facility may exceed the City's applicable noise standards, A~~ noise study, prepared signed and sealed by a ~~qualified California-licensed~~ engineer, for the proposed wireless communications facility and all associated equipment, which shall include without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The noise study shall include without limitation the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

(10) *Other permits and approvals.* A design review permit application must include all permit applications with all required application materials for each and every separate permit or approval required for such telecommunication facility under the City's municipal code, including but not limited to building, electrical, and encroachment, ~~provided that if the City and applicant agree to any necessary time extension in writing, the applicant may elect in writing delivered to the Director to file for such permits subsequent to design review~~.

**Comment [MTS90]:** [Summers] Added to reflect correct FCC standards.

**Comment [MTS91]:** [Summers] Accepted.

**Comment [MTS92]:** [Summers] Added to reflect correct FCC standards.

**Comment [MTS93]:** [Summers] Accepted.

**Comment [MTS94]:** [Summers] Mr. Torres proposed this addition. I recommend rejection because the noise study requirement is intended to verify compliance with the noise standards for all facilities.

**Comment [MTS95]:** [Summers] Mr. Torres proposed this addition. I recommend accepting it, with the addition of "in writing delivered to the Director to file" for clarity.

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(11) *Other published materials.* All other information and/or materials that the City may, from time-to-time, make publically available and designate as part of the application requirements.

(d) *Findings for design review permit approval for wireless towers on private property.* The Director may not deny ~~and~~ design review permit application to change an existing wireless tower on private property ~~only~~ when the Director finds all of the following: The Director must approve a design review permit application to change an existing wireless tower on private property when the Director finds all of the following:

- (1) the applicant proposes a change that involves a structure constructed with all necessary permits in good standing for the sole or primary purpose of supporting CommissionFCC licensed or authorized antennas and their associated facilities;
- (2) the proposed change does not increase the height more than ten percent (10%) or one additional antenna array not more than 20 feet (whichever is greater) above the height that existed on February 22, 2012;
- (3) the proposed change does not increase the width more than 20 feet or the tower width at the level of the appurtenance (whichever is greater) relative to the width that existed on February 22, 2012;
- (4) the proposed change does not involve more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
- (5) the proposed change does not involve excavation outside the lease or license area;
- (6) the proposed change does not defeat any existing concealment elements; and
- (7) the proposed change does not appear to violate ~~a~~ prior conditions of approval except as may be preempted by Section 6409(a), based on the applicant's representations.

(e) *Findings for design review permit approval for base stations on private property.* The Director ~~may not deny~~must approve ~~and~~ design review permit application to change an existing base station on private property ~~only~~ when the Director finds all of the following:

- (1) the applicant proposes a change on a structure (whether built to support CommissionFCC licensed or authorized antennas and their associated facilities or not) that currently supports existing wireless transmission equipment and all necessary permits for such use are in good standing;
- (2) the proposed change does not increase the height more than ten percent (10%) or 10 feet (whichever is greater) above the originally approved structure height;

**Comment [MTS96]:** [Summers] Mr. Loeb'l's correct that the intention of this section is to allow the City to require additional application materials, as stated on the City's website. I've added language to help make this clear.

**Comment [JWL97]:** [Loeb'l] Vague. All materials? Or do you mean materials related to this section? How would an applicant know about the information unless it was somehow identified as required for a wireless tower application.

**Comment [JWL98]:** [Loeb'l] The prior language was vague and unintelligible with several negatives.

**Comment [MTS99]:** [Summers] This section was worded to track Section 6409, which uses the negative form. The proposed rewording is also acceptable.

**Comment [MTS100]:** [Summers] Accepted.

**Comment [MTS101]:** [Summers] Added per Section 6409(a)'s requirements.

**Comment [JWL102]:** [Loeb'l] Will the application be under penalty of perjury? Why is limitation added. Shouldn't the Director have to make an independent evaluation.

**Comment [MTS103]:** [Summers] The proposed deletions are acceptable. The Director will make an independent evaluation, as part of the findings required for approval.

**Comment [MTS104]:** [Summers] Modified to not use the negative as above.

**Comment [JWL105]:** [Loeb'l] See language in d above.

**Comment [MTS106]:** [Summers] Accepted.

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- (3) the proposed change does not increase the width more than six feet relative to the originally approved structure width;
- (4) the proposed change does not involve more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
- (5) the proposed change does not involve excavation outside the lease or license area;
- (6) the proposed change does not defeat any existing concealment elements; and
- (7) the proposed change does not ~~appear to violate~~ a prior conditions of approval ~~except as may be preempted by Section 6409(a), based on the applicant's representations.~~

**Comment [MTS107]:** [Summers] Added per Section 6409(a)'s requirements.

**Comment [MTS108]:** [Summers] Accepted.

(f) *Findings for design review permit approval for facilities in the public right-of-way.* The Director ~~may not deny~~must approve ~~and~~ design review permit application to change an existing wireless tower or base station in the public right-of-way ~~only~~ when the Director finds all of the following:

- (1) the applicant proposes a change on either (1) a structure constructed with all necessary permits in good standing for the sole or primary purpose of supporting ~~Commission~~FCC-licensed or authorized antennas and their associated facilities (*i.e.*, a “wireless tower”); or (2) a structure (whether built to support ~~Commission~~FCC-licensed or authorized antennas and their associated facilities or not) that currently supports existing wireless transmission equipment and all necessary permits for such use are in good standing (*i.e.*, a “base station”);
- (2) the proposed change does not increase the height more than ten percent (10%) or 10 feet (whichever is greater) above the originally approved structure height;
- (3) the proposed change does not increase the width more than six feet relative to the originally approved structure width;
- (4) the proposed change does not involve more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
- (5) the proposed change does not involve excavation outside the proximity to the ground-mounted equipment in the public rights-of-way;
- (6) the proposed change does not defeat any existing concealment elements; and
- (7) the proposed change does not ~~appear to violate~~ a prior conditions of approval ~~except as may be preempted by Section 6409(a), based on the applicant's representations.~~

**Comment [MTS110]:** [Summers] Added per Section 6409(a)'s requirements.

**Comment [MTS111]:** [Summers] Accepted.

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(g) *Conditions of approval specific to Section 6409(a) facilities.* In addition to all other conditions of approval permitted under state and federal law that the Director may deem appropriate for a specific change, all design review permits under this chapter, whether affirmatively granted by the Director under federal directive in 47 U.S.C. § 1455(a) or deemed granted by the operation of law, shall include all the conditions of approval as follows:

- (1) *No automatic renewal.* Grant or acceptance of this permit shall not renew or extend the underlying permit term unless deemed appropriate by the Director.
- (2) *As-builts.* The applicant shall submit to the Director an as-built survey and plans that details the entire post-change support structure, all transmission equipment, and all utilities within ninety (90) days after completed construction.
- (3) *Indemnification.* To the maximum extent permitted by applicable law, the applicant shall at all times defend, indemnify, protect, save harmless, and exempt the City, its officers, commissioners, directors, attorneys, agents, servants, employees, and volunteers from any and all penalties, damages, or charges, excepting only punitive damages, which arise from claims, suits, demands, causes of action, and/or awards, and/or costs and expenses in connection therewith, whether compensatory or consequential, whether legal or equitable, which arise from, or are caused by, the construction, erection, installation, location, collocation, operation, maintenance, repair, modification, replacement, removal, relocation, or restoration of wireless transmission equipment within the City based on any act or omission of an applicant, its directors, officers, attorneys, site managers, agents, employees, contractors, subcontractors, independent contractors, or representatives. Without limiting the generality of the foregoing, the penalties, damages, or charges referenced in this condition of approval, shall include all reasonable attorneys' fees, consultants' fees, and expert witness' fees as costs and expenses recoverable by the City.
- (4) *Compliance with applicable laws.* The applicant shall comply with all applicable provisions in this chapter, any permit issued under this chapter, and all other applicable laws and regulations. Any failure by the City to enforce compliance shall not ~~may be~~ relieve any applicant of its obligations under this chapter, any permit issued under this chapter, or all other applicable laws and regulations.
- (5) *Violations.* The City may revoke a design review permit granted under this chapter for any violation of the City of Ojai Municipal Code. The remedies available to the City shall be cumulative and the City may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- (6) *No waiver of standing.* The City's grant of any design review permit pursuant to 47 U.S.C. § 1455(a) shall not waive, nor be deemed to waive, the City's right and/or standing to challenge the validity of 47 U.S.C. § 1455(a) or any related

**Comment [MTS112]:** [Torres] This provision should be discretionary. If a carrier co-locates on the site of an existing carrier and there is only one year left on the permit, for example, the Department should have discretion to extend the term.

**Comment [MTS113]:** [Summers] I recommend rejection. Federal law does not require extending the term of the underlying permit. Moreover, there is a provision in Section 10-14.110, subdivision (a) allowing for discretionary, not automatic, permit renewals.

**Comment [MTS114]:** [Summers] Added for clarity.

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administrative or judicial order or decision, either on its face or as applied in any particular case.

(7) Insurance:

*Design review permit denial without prejudice.*

(1) *Grounds for a denial without prejudice.* The Director may issue a denial without prejudice for an design review permit when:

- (A) based on the materials submitted by the applicant, the Director cannot make all findings required for the type of proposed change;
- (B) the proposed change would cause a violation of an objective, generally applicable law related to health and safety;
- (C) the proposed change involves the replacement of the entire support structure; or
- (D) the proposed change does not qualify for mandatory approval under 47 U.S.C. § 1455(a), as may be amended or superseded, and as may be interpreted by any order or decision by the Federal Communications CommissionFCC or by any court of competent jurisdiction.

(2) *Procedures for design review permit denial without prejudice.* All design review permit application denials shall be in written form; the written permit denial shall include (i) the decision date; (ii) a statement that the City denies the permit without prejudice; (iii) a short and plain statement with the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

(3) *Submittal after design review permit denial without prejudice.* After the Director denies an design review permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be immediately allowed to either:

- (A) submit a new design review permit application for the same or substantially the same proposed change; or
- (B) submit a new conditional use permit application for the same or substantially the same proposed change.

(4) *Costs to review a denied design review permit.* The City shall be entitled to recover the reasonable costs for its review of any design review permit application. In the event that the Director denies a design review permit application, the City shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to

**Comment [W115]:** [Weirick] Where are the insurance requirements? Probably should state requirements are as reasonably stipulated by the Director. All certificates of insurance should be filed with the City as a condition of construction and of operation, the certificates should include a provision notifying the city at least thirty days prior to any cancellation, this insurance requirement should include any subcontractors or colocators. Suggest getting an insurance specialist or risk analyst to review both the indemnification and insurance language throughout. This needs to be in the ordinance, not just policy/procedure.

**Comment [MTS116]:** [Summers] I recommend deletion. The City cannot require insurance for facilities not on the city's property. Insurance requirements for a facility on the city's property would be required via the lease agreement.

**Comment [MTS117]:** [Summers] Accepted.

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submit a conditional use permit application or submit a design review permit application for the same or substantially the same change unless all costs for the prior-denied permit application are paid in full.

### Sec.10-14.070 Independent consultant review.

(a) *Selection by Director.* The Director, ~~in her or his absolute discretion~~, may select and retain with the approval of the City Manager ~~an~~ one or more independent consultants with expertise in telecommunications satisfactory to the Director and the City Manager ~~in~~ connection with any permit review and evaluation.

(b) *Scope.* The independent consultant shall review the project aspects that involve technical or specialized knowledge and may address:

- (1) whether the applicant submitted a complete and accurate application;
- (2) whether the facts and materials presented in a particular application tend to support certain statements or analyses in the application;
- (3) compliance with any applicable regulations; ~~and/or~~
- (4) any other specific technical or specialized issues requested by the City;

~~— impact on surrounding properties;~~

~~— impact on surrounding businesses;~~

(5) presence or absence of a significant gap in service coverage, as appropriate; and/or.

~~— any other consideration relevant to governmental interest related to health, safety and welfare of the citizens.~~

(c) *Independent consultant fee deposit.* The applicant shall pay the reasonable cost for any independent consultant fees ~~and staff time, along with applicable overhead recovery through~~ a deposit, estimated by the Director, paid at the time the applicant submits an application. The applicant shall pay all consultant fees before the City may act on a permit application. In the event that such costs and/or fees do not exceed the deposit amount, the City shall refund any unused portion within sixty (60) days after the final building permit is released or, if no final building permit is released, within sixty (60) days after the City receives a written request from the applicant.

### Sec. 10-14.080 Maintenance.

**Comment [MTS118]:** [Summers] Council Member Weirick proposed these additions, which are accepted.

I added “one or more” in case the required skills are not available from a single consultant.

**Comment [MTS119]:** [Summers] MR. Loebel proposed the additional items for the independent consultant’s analysis. I recommend rejection, because every project will have some impact on surrounding properties and businesses. The evaluation must consider whether the project meets the required findings for approval, which in part will consider the facility’s impacts. There’s no need to add this language here.

I also recommend rejecting the last proposed addition, as the City already considers non-preempted health and safety issues, such as compliance with the building code and electrical code.

**Comment [MTS120]:** [Summers] Mr. Torres added this word. I recommend not adding reasonable, without a definition thereof.

**Comment [JWL121]:** [Loebel] Rob Clark stated that the City charges an hourly rate plus overhead for work by City staff to the applicant.

**Comment [MTS122]:** [Summers] Mr. Loebel proposed these changes. The City’s fee schedule already prescribes the current cost-recovery fee for staff time. I recommend limiting this section to independent consultant costs.

## DRAFT WITH STAFF RESPONSES TO PUBLIC COMMENTS

- (a) All wireless communication facilities must comply with all standards and regulations of the Federal Communications Commission FCC, and any other state or federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification.
- (d) A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any City property or the public right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other City or public utilities.
- (e) If any Federal Communications Commission FCC, California Public Utilities Commission CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the Director of the revocation within ten (10) days of receiving notice of such revocation.

**Comment [MTS123]:** [Summers] Accepted.

**Comment [W124]:** [Weirick] There should be a provision for enforcing (b) and (c). What happens if demand for performance is ignored? If legal, it should be stipulated that City will perform needed maintenance services at applicants's expense if not accomplished timely. If invoice is not paid, then reference Code sections 1.201-1.205 as governing enforcement.

**Comment [MTS125]:** [Summers] The City can enforce these two sections as violations of the Municipal Code, including under Section 10-14.060, subdivision (g)(5). In the appropriate case, the City could secure an abatement warrant to do the maintenance, and enforce payment via the lien process.

**Comment [MTS126]:** [Summers] Accepted.

### Sec. 10-14.090 Removal of abandoned facilities

- (a) Any facility whose permit has expired or whose permit has been terminated by the City or that is not operated for a continuous period of one hundred eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the Director notifying the owner of the abandonment.
- (b) If the facility is not removed within the ninety (90) day period, the Director may remove the facility at the permittee's, facility owner's, or landowner's expense pursuant to the City's abatement procedures.
- (c) If there are two (2) or more users of a single wireless tower [the permitted facility], this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the wireless tower.
- (d) All applicants for facilities shall post a Two Thousand and no/100 Dollars (\$2,000.00) cash bond with the City to ensure that all costs incurred by the City in removing the antenna or tower shall be provided for. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the Director and approved as to form by the City Attorney, with provision for inspection and city removal of the facility in the event of failure to perform by the responsible parties as defined by this ordinance.

**Comment [O127]:** [Quilici] Suggest it would be better here to refer to Title 9, Chapter 15 of the Code, so that any changes thereto automatically apply here and no further modification to the Code is required.

**Comment [MTS128]:** [Summers] Title 9, Chapter 15 is specific to vacant buildings. I recommend that this specific section be included because an abandoned wireless facility should be completely removed, rather than just repaired as for a vacant building.

**Comment [MTS129]:** [Summers] Accepted.

**Comment [W130]:** [Weirick] This is the type of standard language I have seen in other municipal telcom ordinances. I understand the issue with a small cash bond, I do not agree with eliminating all stipulations with respect to ensuring financial responsibility for demolition.

**Comment [MTS131]:** [Summers] Adding a bonding requirement back is acceptable. I recommend that the amount be unspecified in the ordinance and that the bond be approved as to form by the City Attorney. This provision may create friction with the city's auditor, but allowing bonds to be via letters of credit or other suitable surety, rather than a cash deposit, should placate the auditor.

## DRAFT WITH STAFF RESPONSES TO PUBLIC COMMENTS

### Sec. 10-14.100 Ownership transfers.

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer and the identity of the transferee. The Director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the City, [Federal Communications CommissionFCC](#), and [California Public Utilities CommissionCPUC](#).

Comment [MTS132]: [Summers] Accepted.

### Sec. 10-14.110 Permit terms; permit conditions.

- (a) Each permit issued, except permitted uses pursuant to this chapter, shall be issued for a period of ten years, but may be reduced for public safety reasons or substantial land use reasons pursuant to California Government Code Section 65964(b). The City may establish a build-out period for a wireless telecommunication facility. At the end of the specified permit term, the permit shall automatically expire unless a written request for renewal is submitted by the applicant, prior to expiration, to the director of community development. Upon the expiration of any required permits for the facility, it shall be removed in accordance with the requirement of Section [—10-14.090](#) of this chapter.
- (b) If a request for renewal of the required permit(s) is received, the permit shall remain in effect until a decision on the renewal is made. The renewal request shall be reviewed in a similar manner as the original approval. The review is to insure that the facility is still in operation, that it has been properly maintained, that the original conditions of approval have been adhered to and whether they are to remain the same or need to be modified, and to determine if new means exist to upgrade the facility to better meet the purpose, intent, goals and provisions of this chapter. If new means exist that will allow the redesign or relocation of the facility to better meet the purpose, intent, goals and provisions of this chapter, then the facility must be redesigned and/or relocated accordingly. Failure to comply with this requirement may be considered grounds for denial of a new permit.
- (c) The City may add conditions to any new permits as necessary to advance a governmental interest related to health, safety, or welfare, provided, however, that any condition shall comply with applicable [Federal Communications CommissionFCC](#) and [California Public Utilities CommissionCPUC](#) regulations and standards, and that reasonable advance notice thereof has been provided to all affected parties. If an entitlement is not renewed, the City shall give the applicant written notice thereof together with the rationale on which the City's decision was made. Any applicant that is dissatisfied with a decision to renew or not to renew their permit may appeal the decision in accordance with the provisions of the section(s) under which the original approval was issued.

Comment [MTS133]: [Summers] Accepted.

## DRAFT WITH STAFF RESPONSES TO PUBLIC COMMENTS

### Sec. 10-14.120      Exception from standards.

Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial would prohibit or have the effect of prohibiting the provision of wireless telecommunications services by the applicant. As such, the City may grant special permission or exception, on such terms as the City may deem appropriate, in cases where the City determines that the grant of the special permission is necessary to comply with state and federal law or regulations and where the applicant shows by clear and convincing clear and convincing persuasive evidence that no other location or combination of locations in compliance with this chapter can provide comparable communications. Prior to the issuance of an exception, the applicant shall be required to submit to the director of community development a written explanation setting forth clear and convincing clear and convincing persuasive evidence that the location or locations, and the design of the facility is necessary to close a significant gap in service coverage including capacity, that there is no feasible alternate location or locations, or design, that would close a significant gap or to reduce it to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than significant in service. Exceptions shall be subject to the review and approval of the Planning Commission and City council. The burden is on the applicant to prove significant gaps and least intrusive means as required herein where the City would otherwise have authority under the Code to deny an application.

**Comment [MTS134]:** [Summers] Mr. Torres proposed this addition. I recommend rejection, keeping the standard at "clear and convincing", because federal law does not require a lower standard of proof.

**Comment [MTS135]:** [Summers] See previous comment.

**Comment [MTS136]:** [Summers] Mr. Torres proposed this addition. I recommend rejection. Federal law requires exceptions if necessary to ensure that the ordinance does not prohibit the provision of service, which means that the City must allow an applicant to close a significant gap in coverage via the least intrusive means possible. The City is not required to make exceptions if there is not a gap in service, but instead there is merely lower capacity than desired.

**Comment [MTS137]:** [Summers] Mr. Quilici proposed this addition. It is acceptable.

**Comment [MTS138]:** [Summers] Mr. Torres proposed this addition. I recommend rejection because the applicant should demonstrate that the facility is the least intrusive means to close a significant gap in service for all facilities not protected by Section 6409.

**Comment [W139]:** [Weirick] Where in this draft ordinance is there the language covering us if there is a successful court challenge to the constitutionality of the "deemed granted" federal regulation. My understanding is that we should have language invalidating those code sections if that challenge is successful so as to ensure no entitlement continues or is implied until a formal ordinance amendment is executed. In other words, should Section 4 state that if the "deemed granted" regs are declared unconstitutional, then the CUP regs should be automatically be in force for all applications. I do not want any vacuums created here by federal court action. In other words, make it clear that facility modified apps will then be covered by the new facility stipulations to the extent allowed by state law.

**Comment [MTS140]:** [Summers] See language added to Section 10-14.060, subdivision (a)(5) above.

### Sec. 10-14.130      Conflicts with other ordinances or regulations.

In the event that any City ordinance or regulation, in whole or in part, conflicts with any provisions in this section, the provisions of this section shall control.

### Sec. 10-14.140      Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases in this section might be declared unconstitutional, preempted, or otherwise invalid.

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

## **DRAFT WITH STAFF RESPONSES TO PUBLIC COMMENTS**

SECTION 5. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Ojai Valley News*, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 7. This Ordinance shall become effective on the thirty-first (31st) day after its passage.

CITY OF OJAI, CALIFORNIA

By \_\_\_\_\_  
Severo Lara, Mayor

ATTEST:

\_\_\_\_\_  
Rhonda K. Basore, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Howard, Interim City Attorney

STATE OF CALIFORNIA )

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[Summers] The suggestion that this provision is based upon fear of RF emissions is false. The City's intent in adopting a preference for locations not near residential uses reflects the community's strong aesthetic preferences and the City's desire to reduce the aesthetic impacts from cellular towers to the maximum extent permissible under federal law and PUC § 7901.1. This provision states a preference for facilities not near residential uses, but does not ban them in these areas.