Agenda # 7.IV

City Council

Staff Report

TO: **Honorable Mayor and City Council**

FROM: **John Jansons, City Manager**

DATE: **September 12, 2016**

SUBJECT: **Adoption of draft Ordinance No. 478, amending Farmersville Municipal Code Chapter 12 proposing regulations and mitigation conditions for wireless telecommunication facilities in the City of Farmersville.**

RECOMMENDED ACTION:
It is respectfully recommended that the City Council waive Second Reading and Adopt Ordinance No. 478, amending Farmersville Municipal Code Chapter 12 proposing regulations and mitigation conditions for wireless telecommunication facilities in the City of Farmersville.

BACKGROUND:
An application to install a 123-foot high wireless telecommunication antenna within the right-of-way of Costner Street, immediately west of Farmersville Boulevard identified the need to address requests for installation of telecom equipment in the City. The City's standards regarding such facilities are minimal so the City Council has directed staff to prepare an ordinance to establish standards for such installations.

As noted above, the City received an application for an encroachment permit for installation of a 123-foot high wireless transmission tower in a dirt area within the street right of way on the north side of Costner Street immediately west of Farmersville Boulevard. There is concern that this installation will have negative impacts in terms of aesthetics and public safety as well as potentially negative impacts on future development in the downtown.

The city's existing regulations pertaining to these types of installations are minimal (and there is the possibility that additional applications could follow), so at the August 8, 2016 City Council meeting the Council directed staff to prepare an ordinance to establish standards to regulate wireless facilities within the right of way.

Also on August 8, 2016 the City adopted urgency ordinance 477 putting into place a 45 day moratorium on all applications for such facilities.

On August 22, 2016, the City Council conducted a public hearing and received no comment for or against the proposed Ordinance. The public hearing was duly noticed and the applicant was informed of the city's adoption of the urgency Ordinance 477 and of their intent to further regulate these facilities via Ordinance 478.

Key sections and features of the ordinance include:

In terms of establishing standards and a review procedure, staff reviewed ordinances adopted by other cities and primarily used an ordinance adopted by Rancho Palos Verdes (in Southern California) as a template. The ordinance is proposed to be added to Chapter 12 of the Farmersville Municipal Code. This chapter pertains to "Streets, Sidewalks and Public Places". The ordinance is contained within the attached Resolution.

Chapter 12.18.020 lists a number of definitions for terms related to wireless telecommunications facilities that are used in the ordinance.

Chapter 12.18.040 identifies processing requirements for applications. Most installations will be subject to a public hearing before the Planning Commission - similar to a Conditional Use Permit. All property owners within 300 feet will be notified of the hearing.

Chapter 12.18.050 lists the requirements for an application submittal. Among other requirements the City can require a justification study that demonstrates why there are no other feasible alternatives to establishment of a wireless antenna in the right-of-way. The City can also require photo simulations of the installation.

Chapter 12.18.070 establishes design standards for wireless facilities. Key standards include:

- Proposed antennas and associated equipment must be mounted on existing utility poles (power poles or telephone poles) or on existing street lights. Such installations may project no more than four feet above the top of the pole.

A new pole may be permitted but only when replacing an existing utility pole or street light pole, or an exception for a new pole (similar in height to existing utility poles or light poles) may be granted when no other options are available, however the new pole must be at least 90 feet away from any existing pole. The City can require a justification analysis for such an installation.

- Equipment shall be treated in a way to blend in with the existing pole and shall be made to be as minimally visible as possible.

- The City can require equipment (electrical boxes, equipment boxes, etc.) associated with an antenna be located underground.

- All such installations must comply with the City's noise ordinance.

Section 12.19.070 establishes conditions the City can apply to a project. Key among these are that the City can require insurance for the structure, naming the City as insured.

Section 12.18.110 establishes operation and maintenance standards the City can enforce.

Section 12.18.140 establishes that the permit for a wireless facility within the right-of-way will expire after ten years. The applicant may apply for a new permit to extend use of the facility. Unless that is done, however, the City can require the facility be removed by the applicant.

Section 12.18.170 establishes a process by which an applicant can request an exception to standards of the ordinance. To do so, the applicant must provide clear justification as to why they cannot comply with a particular standard.

Environmental Review
Adoption of the ordinance is exempt from review for environmental impacts under the California Environmental Quality Act (CEQA) per Section 15061(b) (3) (amendments to regulations).

FISCAL IMPACT:
While not developed yet, a recommendation to establish a fee for the receipt and processing of any application pursuant to the adopted regulations of Ordinance 478 will be necessary.

COORDINATION AND REVIEW:
Prior to City Councils approval at First Reading of Ordinance 478 on August 22, 2016, the proposed Ordinance 478 was coordinated and reviewed with the City Attorney, the City's planning consultant, and Planning Commission who unanimously approved enactment of Ordinance 478 following a Public Hearing by Planning Commission Resolution #2016-008 on August 17, 2016.

ALTERNATIVES:
None Proposed.

CONCLUSION:
It is respectfully recommended that the City Council waive Second Reading and Adopt Ordinance No. 478, amending Farmersville Municipal Code Chapter 12, proposing regulations and mitigation conditions for wireless telecommunication facilities in the City of Farmersville.

ATTACHMENT(S): Draft Ordinance 478.

Respectfully Submitted By:

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John Jansons
City Manager

Attachment 1

DRAFT ORDINANCE NO. 478

AN ORDINANCE OF THE CITY OF FARMERSVILLE, CALIFORNIA, ADDING A NEW SUBSECTION ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES" TO CHAPTER 18 OF THE FARMERSVILLE MUNICIPAL CODE TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

SECTION 1. Chapter 12 of the Farmersville Municipal Code is amended to establish Section 12.24 (Wireless Telecommunications Facilities in the Right-of-way) as follows:

12.18.010 Wireless Telecommunications Facilities in the Public Right-of-Way: Purpose.

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

12.18.020 Definitions.

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

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

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

"Code" means the Farmersville Municipal Code.

"Collocation" means the mounting or installation of transmission equipment on an eligible

support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

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

"Director" means the director of public works, or his or her designee.

"Facility(ies)" means wireless telecommunications facilities.

"Ground-Mounted" means mounted to a telecommunications tower.

"Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material.

"Modification" does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

"Monopole" means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a mono-pine, mono-palm and similar mono-poles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

"Mounted" means attached or supported.

"Located within the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

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

"Public right-of-way" means any public highway, public street or alley, public place in the city of Farmersville, either owned by the city or dedicated to the public for the purposes of travel. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

"Sensitive uses" means any residential use, public or private school, day care, playground, and retirement facility.

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

telecommunications facility antennas.

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

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

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

(a) Government owned and operated telecommunications facilities.

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

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

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

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

12.18.030 Applicability.

A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:

1. All facilities for which applications were not approved prior to August 8, 2016 shall be subject to and comply with all provisions of this Chapter.

2. All facilities for which applications were approved by the city prior to August 8, 2016 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to August 8, 2016 that does not comply with the standards, regulations and/or requirements of this Chapter, shall be deemed a nonconforming use and shall also be subject to the provisions of section 12.18.210.

3. All facilities, notwithstanding the date approved, shall be subject immediately to the

provisions of this chapter governing the operation and maintenance (section 12.18.110), radio frequency emissions monitoring (section 12.18.120), cessation of use and abandonment (section 12.18.150), removal and restoration (section 12.18.160) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 12.18.130); provided, however, that in the event a condition of approval conflicts with a provision of this Chapter, the condition of approval shall control until the permit is amended or revoked.

B. This chapter does not apply to the following:

1. Amateur radio facilities;

2. Over the Air Reception Devices ("OTARD") antennas;

3. Facilities owned and operated by the city for its use;

4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement.

12.18.40 Wireless Telecommunications Facility Permit Requirements.

A. Major Wireless Telecommunications Facilities Permit.

All new wireless facilities or collocations or modifications to existing wireless facilities shall require a Major Wireless Telecommunications Facilities Permit subject to planning commission approval unless otherwise provided for in this chapter.

B. Administrative Wireless Telecommunications Facilities Permit.

1. An Administrative Wireless Telecommunications Facilities Permit, subject to the director's approval, may be issued for collocations or modifications to existing facilities

2. In the event that the director determines that any application submitted for an Administrative Wireless Telecommunications Facilities Permit does not meet the criteria established in this Code, the director shall convert the application to a Major Wireless Facilities Permit application and refer it to the planning commission.

C. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies.

D. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement

with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of- way.

E. Speculative Equipment Prohibited. The city finds that the practice of "pre- approving" wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility Permit when the applicant does not actually and presently intend to install such equipment or construct such improvements.

12.18.050 Application for Wireless Telecommunications Facility Permit.

A. Application.

1. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a wireless telecommunications facility in the public right-of-way shall fully and completely submit to the city a written application on a form prepared by the director.

2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. Application Contents The director shall develop an application form and make it available to applicants upon request. The supplemental application form for a new wireless telecommunications facility installation in the public right-of-way shall require the following information, in addition to all other information determined necessary by the director:

1. The name, address and telephone number of the applicant, owner and the operator of the proposed facility.

2. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the proposed facility. If the owner will not directly provide wireless telecommunications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.

4. A full written description of the proposed facility and its purpose.

5. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:

    a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. A layout plan, section and elevation of the tower structure shall be included.

    b. A photograph and model name and number of each piece of equipment included

    c. Power output and operating frequency for the proposed antenna.

    d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

    e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.

6. A justification study which includes the rationale for selecting the proposed site; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

7. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with section 12.18.070.

8. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.

9. A completed environmental questionnaire.

10. If the applicant requests an exception to the requirements of this chapter (in accordance with section 12.18.170), the applicant shall provide all information and studies necessary for the city to evaluate that request.

11. An accurate visual impact analysis showing the maximum silhouette, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles.

12. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

13. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts Effective Radio Power "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.

14. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.

15. A traffic control plan when the proposed installation is on any street in a non- residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

16. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. The applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.

    a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, 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;

    b. In the event the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

20. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

21. An application fee, and a deposit for a consultant's review as set forth in paragraph E of this section in an amount set by resolution by the city council and in accordance with California Government Code section 50030.

22. Any other information and/or studies determined necessary by the director may be required.

C. Application Contents – Modification of Existing Facility. The content of the application form for a modification to an existing facility shall be determined by the director, and shall include but not be limited to the requirements listed in section 12.18.050(B) unless prohibited by state or federal law.

D. Effect of State or Federal Law Change. In the event a subsequent state or federal law prohibits the collection of any information required by section 12.18.050(B), the director is authorized to omit, modify or add to that request from the city's application form with the written approval of the city attorney, which approval shall be a public record.

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

1. Compliance with applicable radio frequency emission standards;

2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;

3. The accuracy and completeness of submissions;

4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;

5. The applicability of analysis techniques and methodologies;

6. The validity of conclusions reached or claims made by applicant;

7. The viability of alternative sites and alternative designs; and

8. Any other specific technical issues identified by the consultant or designated by the city.

9. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultants cost.

12.18.060 Review Procedure

A. Pre-submittal Conference. Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with Public Works Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public Works Department staff will endeavor to provide applicants with an appointment within approximately five (5) business days after receipt of a written request.

B. Notice; Decisions. The provisions in this section describe the procedures for approval and any required notice and public hearings for an application.

1. Planning Commission Hearings. Any permit application under this chapter subject to planning commission approval shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Code section 17.96.030. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in section 12.18.090.

2. Director's Decision Notice. The director may approve, or conditionally approve, an application only after they make the findings required in section 12.18.080. Within five days after the director approves or conditionally approves an application under this chapter, the director shall provide notice of the decision to the applicant.

3. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than twenty (20) days prior to the expiration.

4. Written Decision Required. All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.

C. Appeals. Any aggrieved person or entity may appeal a decision by the director or the planning commission as provided in accordance with the provisions in Code chapter 17.96.050. The appellate authority may hear the appeal *de novo*.

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

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

1. General Guidelines.

   a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize aesthetic impacts from surrounding properties all in a manner that achieves compatibility with the community.

   b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

   c. Any permit or approval issued by the City in violation of the requirements of this ordinance is void and of no effect.

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

3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

4. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

5. Poles.

   a. Facilities shall be located consistent with section 12.18.180 unless an exception pursuant to section 12.18.170 is granted.

   b. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are

not replacing an existing pole. (For exceptions see subparagraph (h) below and sections 12.18.170 and 12.18.200.)

c. Utility Poles. The maximum height of any antenna shall not exceed forty-eight (48) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than twenty-four (24) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

d. Light Poles. The maximum height of any antenna shall not exceed four (4) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than sixteen and a half (16 1/2) feet above any drivable road surface.

e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.

f. Pole mounted equipment, exclusive of antennas, shall not exceed six (6) cubic feet in dimension.

g. An exception shall be required to place a new pole in the public right-of-way. If an exception is granted for placement of new poles in the right-of-way:

   i. Such new poles shall be designed to resemble existing poles in the right- of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

   ii. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole to the extent feasible.

   iii. A new pole justification analysis shall be submitted to demonstrate why existing infrastructure cannot be utilized and demonstrating the new pole is the least intrusive means possible including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed facility.

h. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible. For all wooden poles wherein interior installation is infeasible, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.

7. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

8. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

9. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 17.76.030 so as not to obstruct the intersection visibility triangle.

10. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

11. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least eighteen (18) inches from the curb and gutter flow line.

12. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

    a. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged.

    b. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.

13. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

14. Lighting.

    a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless

required by the Federal Aviation Administration or other government agency.

b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

15. Noise.

a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

b. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed forty-five (45) dBA.

16. RESERVED

17. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti- climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

18. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment

and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

19. The installation and construction approved by a wireless telecommunications facility permit shall begin and be completed within six (6) months after its approval or it will expire without further action by the city.

B. Conditions of Approval. In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the director:

1. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.

2. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within thirty (30) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

   a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

   b. The legal status of the owner of the wireless telecommunications facility.

3. The permittee shall notify the city in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in section 12.18.160.

4. At all times, all required notices and/or signs shall be posted on the site as required by the

Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

5. Permittee shall pay for and provide a performance bond or other form of security approved by the city attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

6. If a nearby property owner registers a noise complaint, the city shall forward the same to the permittee. Said compliant shall be reviewed and evaluated by the applicant. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose conditions on the project to achieve said objective.

7. A condition setting forth the permit expiration date in accordance with section 12.18.140 shall be included in the conditions of approval.

8. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The city may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the city by the permittee.

9. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.070(B)(5).

10. The permittee shall not move, alter, temporarily relocate, change, or interfere with any

existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right- of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

11. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

12. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.

14. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars ($2,000,000) for each occurrence and Four Million Dollars ($4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium. The insurance provided by permittee

shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.

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

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

17. Should the utility company servicing the facility with electrical service that does not

require the use of an above ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within ninety (90) days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.

18. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

19. Permittee shall agree in writing that the permittee is aware of, and agrees to abide by, all conditions of approval imposed by the wireless telecommunications facility permit within thirty (30) days of permit issuance. The permit shall be void and of no force or effect unless such written consent is received by the city within said thirty (30) day period.

20. Prior to the issuance of any encroachment, permittee may be required to enter into a right-of-way agreement with the city in accordance with Section 12.18.100. "Permittee" shall include the applicant and all successors in interest to this permit.

12.18.080 Findings.

No permit shall be granted for a wireless telecommunications facility unless all of the following findings are made by the director:

A. All notices required for the proposed installation have been given.

B. The proposed facility has been designed and located in compliance with all applicable provisions of this chapter.

C. If applicable, the applicant has demonstrated its inability to locate on existing infrastructure.

D. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.

E. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible and supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not available.

12.18.090 Nonexclusive grant.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

12.18.100 Emergency Deployment.

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

12.18.110 Operation and Maintenance Standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards.

A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours:

   1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or

   2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.

B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.

C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. General dirt and grease;

2. Chipped, faded, peeling, and cracked paint;

3. Rust and corrosion;

4. Cracks, dents, and discoloration;

5. Missing, discolored or damaged artificial foliage or other camouflage;

6. Graffiti, bills, stickers, advertisements, litter and debris;

7. Broken and misshapen structural parts; and

8. Any damage from any cause.

D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.

E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

F. Each facility shall be operated and maintained to comply with all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

12.18.120 RF Emissions and Other Monitoring Requirements.

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

A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio

frequency emissions engineer;

B. The facility is in compliance with all provisions of this section and its conditions of approval.

12.18.130 No Dangerous Condition or Obstructions Allowed

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

12.18.140 Permit Expiration.

A. Unless Government Code section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

12.18.150 Cessation of Use or Abandonment

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.

C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be

grounds for:

1. Litigation;

2. Revocation or modification of the permit;

3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;

4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or

5. Any other remedies permitted under this Code.

12.18.160 Removal and Restoration – Permit Expiration, Revocation or Abandonment

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

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code. Upon a showing of good cause, an extension may be granted by the director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Prosecution;

2. Acting on any security instrument required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or

4. Any other remedies permitted under this Code.

C. Summary Removal. In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of- way, or an imminent threat to public safety, or determines other exigent circumstances require immediate

corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

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

12.18.170 Exceptions.

A. The city council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The city council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. The city council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the city's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the planning commission may grant a limited, one-time exemption from strict compliance subject to the provisions in this section

B. Required Findings. The planning commission shall not grant any exemption unless the applicant demonstrates with clear and convincing evidence all the following:

1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, section 332(c)(7)(C)(ii);

2. The applicant has provided the city with a clearly defined technical service objective and a clearly defined potential site search area;

3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and

4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.

C. Scope. The planning commission shall limit its exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The planning commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

D. Independent Consultant. The city shall have the right to hire, at the applicant's expense, an independent consultant to evaluate issues raised by the exception and to submit recommendations and evidence in response to the application.

12.18.180 Location Restrictions.

Locations Requiring an Exception. Wireless telecommunications facilities are strongly disfavored in certain areas. Therefore the following locations are permitted when an exception has been granted pursuant to section 12.18.170:

A. Public right-of-way of local streets as identified in the general plan if within the residential zones;

B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.

12.18.190 Effect on Other Ordinances.

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

12.18.200 State or Federal Law.

A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the city attorney shall be in writing with citations to

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

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

C. All installations permitted pursuant to this chapter shall comply with all federal and state laws including but not limited to the American with Disabilities Act.

12.18.210 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way

A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this chapter.

B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the city can require such compliance under federal and state law.

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

SECTION 6. Severability. If any section, subsection, sub-chapter, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, sub-chapter, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more

sections, subsections, sub-chapters, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. The foregoing ordinance shall take effect after thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the _____ , a newspaper of general circulation in the City of Farmersville, State of California, together with the names of the Council members voting for and against the same.

SECTION 8. Certification. The City Clerk of the City of Farmersville shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

SECTION 9. Applicability. This ordinance shall apply to all pending applications.

The foregoing Ordinance No. 478 was introduced at a regular meeting of the City Council of the City of Farmersville on the 22nd day of August, 2016, and was passed and adopted at a regular meeting of the City Council on the _____ day of _____, 2016, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
Paul Boyer, Mayor
City of Farmersville

ATTEST:

_____
Acting City Clerk
City of Farmersville