

## Table of Contents

TITLE 10 .....	1
Chapter 16. Wireless Telecommunications Facilities Chapter.....	1
Section 10-16.101 Purpose and Legislative Intent .....	1
Section 10-16.102 Severability.....	1
Section 10-16.103 Location of Wireless Telecommunications Facilities.....	1
Section 10-16.104 Exclusions.....	3
Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter .....	3
Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities .....	4
Section 10-16.107 Special Use Permit Applicability.....	5
Section 10-16.108 General Policies for All Applications under this Chapter.....	6
Section 10-16.109 Processing Fees to be Borne by Applicant.....	12
Section 10-16.110 Application Requirements for an Administrative Special Use Permit .....	13
Section 10-16.111 Application Requirements for a Special Use Permit .....	18
Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment.....	21
Section 10-16.113 Small Cell and Small Wireless Facilities .....	22
Section 10-16.114 Procedural Requirements before Action on any Application Taken .....	3025
Section 10-16.115 Procedural Requirements for a Granting a Special Use Permit.....	31
Section 10-16.116 Reasons for Denial.....	31
Section 10-16.117 Assignment and Transfer and Default and Revocation and Termination of Administrative Special Use Permits or Special Use Permits or for Wireless Telecommunications Facilities .....	32
Section 10-16.118 Responsible Party(s) .....	33
Section 10-16.119 Removal and Performance Security.....	33
Section 10-16.120 Liability Insurance .....	33
Section 10-16.121 Indemnification.....	34
Section 10-16.122 Security.....	34
Section 10-16.123 Signage.....	35
Section 10-16.124 Reservation of Authority to Inspect Wireless Telecommunications Facilities .....	35
Section 10-16.125 Removal or Moving of Wireless Telecommunications Structures and Facilities.....	35
Section 10-16.126 Penalty .....	37
Section 10-16.127 Relief .....	38
Section 10-16.128 Adherence to State and/or Federal Rules and Regulations .....	38
Section 10-16.129 RF Emissions .....	39
Section 10-16.130 Conflict with Other Laws .....	39
Section 10-16.131 Definitions .....	39

## ***TITLE 10***

### ***Chapter 16. Wireless Telecommunications Facilities***

#### ***Section 10-16.101 Purpose and Legislative Intent***

The Telecommunications Act of 1996 affirmed the City of Hercules' authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This Chapter provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The City of Hercules finds that wireless telecommunications facilities (facilities) may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

#### ***Section 10-16.102 Severability***

- a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- b) Any special use permit issued pursuant to this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

#### ***Section 10-16.103 Location of Wireless Telecommunications Facilities***

- a) New towers or other support structures shall be prohibited in residential districts, and historic districts, unless the applicant provides clear and convincing evidence demonstrating that (1) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; (2) that the intended area cannot be served from outside the district without a new tower or other support structure; (3) that no

existing or previously approved facility can reasonably be used for antenna placement; and (4) that not to permit a new tower or other support structure would result in a significant gap in service.

- b) Applicants shall locate, site and erect all facilities and associated equipment in accordance with the following priorities, in the following order:
  - 1) On City-owned properties or facilities without increasing the height of the tower or support structure.
  - 2) On other existing structures without increasing the height of the tower or support structure.
  - 3) On City-owned properties or facilities.
  - 4) On existing structures without exceeding the maximum permitted height under this Chapter.
  - 5) On properties in areas zoned for business use.
  - 6) On properties in areas zoned for open space but not extending higher than one hundred (100) feet below any ridgelines.
  - 7) On properties in designated historic districts.
  - 8) On properties in areas zoned for residential use.
- c) If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- d) The person seeking such an exception must satisfactorily demonstrate the reason(s) why a special use permit or administrative special use permit should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- e) Notwithstanding the priorities set forth in the preceding Section 10-16.103 (b) above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Chapter and the public interest as determined by the City and that serves the intent of the Applicant.

### ***Section 10-16.104 Exclusions***

The following shall be exempt from this Chapter:

- a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- b) Any wireless reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications less than thirty-five (35) feet in height above the ground.
- d) Noncommercial facilities used exclusively for providing unlicensed spread spectrum technologies where (1) there is no charge for the use of the wireless service; (2) the facility does not require a new tower or increase the height of the structure being attached to; and (3) the service is not intended to be useable more than one-hundred feet (100) from the antenna(s).

### ***Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter***

- a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Chapter shall be allowed to continue as it presently exists for the term of the original permit, provided that (1) it exists and is operating as originally permitted; and (2) that any modification of the facility has been properly permitted.
- b) Any modification not properly previously permitted prior to the adoption of this Chapter must be permitted under this Chapter.
- c) Any new modification of a facility and any modification of equipment associated with the facility, must be permitted under this Chapter and will require the entire facility and any new or modified installation to comply with this Chapter, except that any tower or other support structure properly permitted prior to the adoption of this Chapter shall have the height grandfathered and may remain at the originally permitted height.
- d) Any repair and maintenance of a wireless facility that does not (1) increase the height of the structure, (2) alter the profile, (3) change the RF emissions levels, (4) increase the footprint of the facility, or (5) otherwise exceed the conditions of the conditional or special use permit, does not require an application for a new special use permit, but may require a building permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

***Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities***

- a) Modifications for towers shall be allowed, provided that cumulatively they would not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower, or individually extend more than ten feet (10) feet beyond the extremities of the tower in any direction.
- b) Modifications for support structures other than towers permitted prior to the adoption of the ordinance codified in this Chapter shall be allowed, provided that individually they do not extend more than ten feet (10) beyond the edge of the structure in a horizontal direction. Vertical modifications cumulatively shall not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower
- c) To comply with the concealment intent in regards to minimizing the visual impact, all modifications shall comply with and not exceed the size parameters and limitations set forth in this Chapter.
- d) Required “First Step” documents for 6409(a) Eligible Facilities shall include;
  - 1) Funding of escrow account, as set by the City’s Master Fee Schedule.
  - 2) Completed project information form.
  - 3) Submittal of full, formal, and complete construction drawings certified by a professional engineer (PE) licensed in the State. Note: Zoning drawings are not acceptable.
  - 4) Report on the physical condition/safety of the facility utilizing the most recent version of ANSI/TIA-222 (American National Standards Institute / Telecommunications Industry Association) or adopted equivalent, certified as being true and accurate by a PE licensed in the State.
  - 5) Insurance certificate listing the City and its consultant as additional insureds.
  - 6) Performance bond.
  - 7) Removal bond (updated) for the life of the facility.

- 8) Certificate of completion or proof of passing the final inspection for the latest previously approved permit at the location/facility.
- 9) Proof of property owner authorization for this modification.
- 10) Color-coded carrier-generated RF coverage (propagation) maps, with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility.
- 11) Completed RF study data form provided by the City showing the ‘modeling’ information used to produce the RF coverage (propagation) maps for each frequency and antenna used and or proposed to be used.
- 12) Hazmat Plans:
  - a. Hazmat Plan for any storage and/or use of liquid or gas fuel or batteries.
  - b. CEQA report, as applicable.

### ***Section 10-16.107 Special Use Permit Applicability***

A special use permit application shall be required for the following types of structures and activities and shall comply with the requirements set forth in this Chapter:

- a) A new tower or support structure; or
- b) A substantial modification or subsequent to the adoption of this Chapter any modification that would increase the height, width, profile, structural loading on the support structure beyond the definition of eligible facility; or increase the size of the compound beyond the maximum allowed under this chapter, or does not conform with the concealment policy for towers and wireless facilities set forth in Section 10-16.108(z) (including but not limited to height, size of the profile, color and camouflage and the distance or size of extensions beyond the tower or other support structure). To protect and maintain the integrity and effect of the concealment policy, any lateral modifications that would extend more than ten (10) feet from the lateral extremity of a tower or the width of the tower at the height of attachment, or more than three (3) feet from the edge of a non-tower support structure would be subject to a special use permit; or
- c) A facility permitted after the adoption of this Chapter that involves construction or excavation or deployment outside the compound (i.e., outside the current boundaries of the site); or

- d) Proposes more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the public rights-of-way and base stations if the modification involves the installation of any new equipment cabinets on or below the ground if there are no pre-existing ground or below ground cabinets associated with the structure, or that involves the installation of ground or below ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or
- e) Facilities that do not comply with conditions associated with the siting approval of the original support structure and/or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the threshold for an eligible facility as defined in FCC Report and Order 14-153.

## **Section 10-16.108 General Policies for All Applications under this Chapter**

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administratively granted authority for wireless facilities for the express purpose of achieving these outcomes. The following are general policy actions are intended to accomplish these goals:

### *General Application Process*

- a) Implementing an application process and requirements; establishing procedures for examining and analyzing the contents of an application and issuing a special use permit or administrative special use permit that is both fair and consistent with this section;
- b) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- c) Requiring administrative special use permit for any modification of an eligible facility.
- d) Requiring a special use permit for any new tower or other support structure or any co-location or modification of a facility that is not an eligible facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014;
- e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.

- f) No work of any kind on a facility shall be started until the application is reviewed and approved by the Commission or appropriate administrative entity and the special use permit, or administrative special use permit if applicable, has been issued and all other applicable permits have been issued.
- g) A facility or part thereof, including but not limited to ancillary structures or equipment, utilities installed to serve the facility and equipment used to construct or maintain the facility, shall not infringe on or in any manner whatsoever, at any time and for any reason other than for an official governmentally declared emergency, encumber, obstruct or interfere with the City's property and/or public rights-of-way or the use thereof without the City's express written permission.
- h) The Planning department is the officially designated agency or body of the city to whom applications for an administrative special use permit or a special use permit for a facility must be made. The City at its discretion may hire an outside consultant to accept, review, analyze, evaluate and make recommendations to staff and present the findings to the Planning Department or Planning Commission (Commission) who is authorized to make decisions with respect to granting or not granting or revoking an administrative special use permit or special use permits applied for under this Chapter respectively. The Commission shall possess the right to appeal Planning Department decisions while the City Council shall possess the sole right to hear appeals on all special use permits following the procedure outlined in Chapter 44 of the City Zoning Chapter.
- i) Pre-Application Meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address (1) issues that will help to expedite the application review and permitting process; and (2) identify and address certain issues or concerns the City or the applicant may have.
- j) Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months, a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a deposit fee set forth in the City's Master Fee Schedule, which shall have been paid to the City prior to any site visit or pre-application meeting.
- k) An application may not be filed until both a site visit, when required, a pre-application meeting are held, and any required applicable community outreach meeting has been conducted and a story pole has been erected as required, and all fees and deposits have been delivered to the City Planning Department.
- l) Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification the technical need for a new facility must be documented and substantiated by clear and convincing technical evidence showing a particular carrier's or other user-of-the-facility's technical need for what is requested. Notwithstanding the



preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.

- m) The applicant must provide clear and convincing documentation to substantiate that it has the legal right to proceed as proposed on the site in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization (which shall not constitute approval of proposed work). If the applicant owns the site, a copy of the ownership record is required.
- n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- o) Owner Permission: An applicant intending to co-locate on an existing facility shall be required to provide written documentation of the intent of the existing facility owner and property owner to allow the intended use by the applicant.
- p) Properly Completed Application: All applicants shall closely follow the instructions for preparing an application. not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the otherwise required thirty (30) day notification period of an incomplete application until the receipt of a complete and properly completed application.
- q) Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- r) Any and all representations made by the applicant or that are made in support of the application during the application process, whether written or oral, shall be deemed to be on the record and shall be deemed to have been intended to be relied upon in good faith by the City. Any oral representation shall be treated as if it were made in writing.
- s) Single Submittal. To establish a clear and specific date certain by which to measure the time allowed the City for the review for completeness of an application, as well as the date by which action must be taken, an application must be filed as a single submittal and not in separately subsequently provided submittals. No application shall be allowed to be filed in pieces or in a piecemeal fashion or manner over any given amount of time, unless permission to do so is expressly both requested and granted in writing.
- t) Type of Application. To prevent confusion and any loss of the City's rights under the FCC's "Shot Clock" rule pursuant to the FCC Report and Order 14-153 as reference to the date an application was officially filed and the start of the shot clock regarding the limited time allowed to determine if an application is complete, at the time of the initial

filing of an application, it must contain a cover letter stating (1) whether the application is filed as an “eligible facility” application including the justification for such, or a “substantial modification,” or involves a new support structure; and (2) a statement that the application contains all of the information required under this Chapter for that type of Application, and be signed by a person with first-hand personal knowledge of such.

- u) Required Commitment Statements. All applications shall include written commitment statements that:
  - 1) The applicant’s facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission or City Council in writing;
  - 2) The construction of the facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- v) Number of Applications: An applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting as well as computerized copies of such. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete by City staff and a recommended action report is prepared for the Commission’s consideration.

*Design Intent, Siting and Applicable Building and Safety Codes*

- w) Minimizing the Visual Impact: For reasons of concealment, all proposed facilities and Modifications to Facilities shall be designed to so as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the Facility substantially invisible, or as nearly so as is reasonably possible.
- x) Least Intrusive Option: As a matter of concealment, requiring that the facility shall be the least visually intrusive among those options available, given the facts and circumstances.
- y) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- z) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural

surroundings so as to make the Facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established or maximum permitted height.

- aa) Required Use of Existing Structures: Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new support structure, or for applications submitted subsequent to the adoption of this Chapter to increase the height, footprint or profile of a facility beyond the maximum permitted height, width or overall profile. In instances involving a substantial modification, or for a new facility subsequent to the adoption of this Chapter, the Applicant shall submit a comprehensive report inventorying all existing structures fifty (50) feet or more in height within one-half (1/2) mile of the location of any proposed new Facility.

Co-located equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

- bb) Modifications of a Tower So as not to defeat the concealment intent of the maximum permitted height of towers or other support structures, modifications, singly or cumulatively on a single structure, shall not exceed the height allowed under the original permit by more than ten (10) feet, nor shall any lateral modification extend more than ten (10) feet from the lateral extremity of a tower, nor more than three (3) feet from the edge of a non-tower support structure.
- cc) Effect of Lease or Option to Lease on Siting/Location Priorities. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Chapter. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. If a site other than the number 1 priority is proposed, the applicant must provide clear and convincing technical evidence as to why co-location is technically impracticable or clear and convincing relevant information as to why it would be commercially impracticable. Build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Chapter.
- dd) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- ee) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial

work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations, and may include the installation of gravel, asphalt or other road building materials as determined by the City Engineer or their designee.

- ff) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- gg) Certifications: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California.
- hh) Permits and Licenses: A holder of a special use permit or administrative special use permit granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- ii) Compliance with Law: All Facilities, must at all times comply with all applicable local, State and federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards
- jj) Distributive Access Systems (DAS) and Small Cell nodes that are owned or operated by a commercial carrier and are part of a commercial wireless system, or when activated are capable of being used for commercial purposes by the general public, are expressly included in the context of this Chapter, regardless of the location or whether the facility is located inside or outside a structure or building.

#### *Other Policies*

- kk) Community Outreach Meeting. To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, at the City's option given the facts and circumstances involved, for any i) new support structure, ii) any substantial modification or iii) any modification that would increase the height of the facility by five (5) feet or more or increase the size of the profile by two (2) feet or more horizontally, a community outreach meeting may be required to be held between the applicant, the residents in the area of the proposed site or work and the City. At least two (2) weeks prior to the date of the meeting written notice

of the meeting and its purpose shall be provided to all residents located within one thousand five hundred (1,500) feet of the site. The meeting shall be held on a weeknight no earlier than 7:00 p.m. and no later than 8:00 p.m. All costs related to the meeting shall be borne solely by the Applicant, including but not limited to the cost of written notification.

- ll) Shared Use. The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility for co-location by other wireless service providers, and shall:
  - 1) Respond within 60 days to a request for information from a potential shared-use applicant;
  - 2) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
  - 3) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
  - 4) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.
- mm) Denial of a Non-Eligible Facility application: The City may, for just reason and cause, deny an application for anything that does not meet the requirements stated herein or which is otherwise not complete or as set forth in Section 10-16.115.

### ***Section 10-16.109 Processing Fees to be Borne by Applicant***

- a) The City may hire a consultant to assist the City in reviewing and evaluating Applications.
- b) The total amount of the funds needed as set forth in the City's Master Fee Schedule, as may be modified from time to time, may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- c) Preliminary informational discussion totaling less than one (1) hour cumulatively, shall be allowed to provide initial information. However, to prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunications facilities, an applicant shall place with the City a deposit as set forth in the City's Master Fee Schedule which shall be maintained in an escrow account for that application. The deposit is intended to cover all reasonable costs of any consultant with twenty percent (20%) overhead charge and City staff time plus twenty percent (20%) overhead in connection with the review of any Application or the permitting, inspection, construction or modification requested and an pre-application submittal

review or evaluation requested by the applicant and any lease negotiations. The payment of the deposit fee with the City shall precede site visit and any work being done that is related to an intended application or lease.

- d) If at any time during the review process this escrow account has a balance less than two thousand five hundred dollars (\$2,500.00), applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00 or such other amount as determined by the Planning Director to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further review, action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the certificate of completion, the remaining balance shall be promptly refunded to the applicant upon request.
- e) If an application is amended at any time prior to the grant of the permit or authorization required under this Chapter, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the special use permit or administrative special use permit.
- f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses. Billing of consultant time will have a twenty percent (20%) administration charge added. Additionally, any City staff time with twenty percent (20%) overhead plus any hard costs such as publications, mailing, and copies shall also be tabulated and added to the total billable costs.
- g) The total amount of the funds needed as set forth in the City's Master Fee Schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's questions as regards the requirements of this Chapter or other applicable law, rule or regulation.

### ***Section 10-16.110 Application Requirements for an Administrative Special Use Permit***

Application requirements shall include but not be limited to the following items, be deemed complete, and must receive administrative approval by the City Planning Department, or City Manager designee, for the construction or installation of qualifying improvements prior to seeking the issuance of a Building Permit.

### *Ownership and Management*

- a) The name, address, phone number and e-mail address of the person preparing the application;
- b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- c) The postal address and tax map parcel number of the property;
- d) A copy of the FCC license applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands for the location;
- e) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower;

### *Zoning and Planning*

- f) The zoning district or designation in which the property is situated;
- g) The size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h) The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- i) A site plan to scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, distances between property lines and adjacent structures and any other requirements of site plans;
- j) Elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting;
- k) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- l) The type and design of the facility, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Facility's capacity to accommodate the required number of antenna arrays for which the structure must be

designed;

- m) All applications shall contain proof of a performance security and liability insurance and a letter of indemnification, in conformity with City provisions listed in this Chapter.

#### *Design, Visibility and Aesthetics*

- n) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and create the smallest profile reasonably possible under the facts and circumstances, all antennas attached to a tower or other structure shall be mounted inside the structure, or if such is not physically or technologically possible then flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- o) After the adoption of this Chapter, the maximum permitted width or profile of a new tower, including any attachments, shall not exceed ten (10) feet, absent clear and convincing technical evidence documenting the need for a larger profile.
- p) Flush Mounting. All new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- q) Placement on Building Façade. If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas and cabling as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- r) Least Visually Intrusive Means. As a matter of concealment, all applications for a proposed facility applicable to this Chapter shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible to the greatest number of people, given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and be substantially invisible to the community in the area of the facility. The City expressly reserves the right to require the use of stealth or camouflage siting and deployment techniques, including but not limited to DAS (Distributive Access System) and Small Cell nodes or the functional equivalent of such to achieve this goal and such shall be subject to approval by the Commission, unless such can be shown to be either commercially or technologically impracticable.
- s) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.



- t) **Lighting.** No tower or support structure constructed after the effective date of this Chapter shall be tall enough to require lighting. In the event lighting is legally unavoidable and is required, the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. In the event lighting is legally unavoidable and is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

As of the effective date of the ordinance codified in this Chapter, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the Tower be retrofitted so as to comply with the lighting requirements of this Chapter.

- u) **Screening.** The applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen (15) feet of the facility and all related equipment and structures associated with the facility.
- v) **Visual Impact Assessment.** The Applicant shall furnish a visual impact assessment, which shall include:
  - 1) A computer-generated "Zone of Visibility Map" at a minimum of one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
  - 2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

#### *Safety*

- w) **Age.** The age of the facility in years, including the date of the grant of the original permit;
- x) **Description.** A description of the type of tower, e.g., guyed, self-supporting lattice or

monopole;

- y) Tower Details. The make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the facility's capability to safely accommodate the facilities of the applicant without change or modification;
- z) Changes Narrative. If a modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the compound or property, a detailed narrative explaining what changes are needed and why they are needed;
- aa) Foundation. A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure;
- bb) Physical Condition. If modifying an existing tower or other support structure, an ANSI /TIA-222 Report regarding the current physical condition of the facility and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No Building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City Planning Department;
- cc) Structural Analysis. The applicant shall provide certified documentation in the form of a structural analysis, including any assumptions and calculations proving that the proposed facility modifications will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- dd) RF Emissions Report. A cumulative RF Emissions study and report accounting for all RF emitting equipment at the facility, including a description of the methodology used, any assumptions made and showing the calculations;
- ee) RF Emissions On-Site Survey. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and activation of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
- ff) RF Emissions Remediation. A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.

gg) FAA Determination. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

### ***Section 10-16.111 Application Requirements for a Special Use Permit***

The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” except the following additional items shall also be required prior to a decision being made by the Planning Commission at a public hearing prior to seeking the issuance of a Building Permit for any construction or installation of a new facility or major modification project.

#### ***Proof of Technical Need***

- a) For a new tower or other new support structure the applicant shall be required to submit clear and convincing evidence that a new tower or support structure is the only type of structure within one-half (1/2) mile of the proposed tower or support structure that will enable the provision of wireless services primarily within the City.
- b) Documentation that the facility is necessary for that carrier to provide service in the community and that co-location on an existing structure is not feasible.
- c) Documentation that co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for such use. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an application to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

#### ***Design of Towers (Type, Height, Setback and Fall Zones)***

- d) To enable a new tower or other new support structure to be extended in height at a future date, if needed, the wireless telecommunications facility shall be structurally designed to accommodate at least four (4) antenna arrays, with each array to be flush mounted unless clear and convincing technical evidence demonstrates the impracticability of flush mounting.
- e) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence.

- f) The maximum permitted total height of a new tower or support structure shall be thirty-five (35) feet above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological Need for a greater height, and should take into consideration the ability to co-locate other carriers in the future.
- g) As the City has made the policy decision that more facilities of a shorter height is in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- h) The applicant for a new tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and at a height ten (10) feet lower to show that any lower height would have the effect of prohibiting the provision of service and should take into consideration the ability to co locate other carriers in the future.
- i) The City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical need for what is requested.
- j) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.
- k) Setback and Fall Zone: All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public-rights-of-way so long as required minimum distances to adjacent buildings are complied with.

- l) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- m) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.

*Community Outreach in the Case of a New Tower*

- n) In order to better inform the public, the applicant shall be responsible for notifying the public by mail as well as through on-site signage, placing a story pole, and producing a photo simulation report as more specifically detailed below prior to being considered by the City's approving body.
  - 1) Story Pole. The applicant shall arrange to place a "story pole" at the exact proposed tower location and raise upon a temporary mast, a minimum of ten (10) feet in length, brightly colored flags/balloons at the maximum height of the proposed new tower in the same vertical and horizontal dimensions as the proposed antenna for at least forty-eight (48) consecutive hours immediately preceding and through the end of the community meeting.
  - 2) On-Site Signage. A four (4) foot by eight (8) foot sign shall be erected prior to community meeting notices being mailed so as to be clearly visible from the road nearest the proposed site and shall be easily readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible and contain the times and date(s) of the initial community outreach meeting and contact information.
  - 3) Draft Community Meeting Notices. At least fourteen (14) calendar days in advance of mailing community meeting notices, the applicant shall provide a one (1) page draft copy of a public outreach notice for approval to the City and its consultant, if applicable, to include the date the story pole will be in place and the date, time, and place of the community outreach meeting and description and elevation of the proposed project.
  - 4) Mailing Community Meeting Notices. The applicant shall mail the above approved community meeting notices by first-class mail to all property owners, residents, and businesses located within one thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility (with a certified/reproducible copy of the mailing labels being provided to the City) at least fourteen (14) days, but no more than twenty-one (21) days, prior to the community outreach meeting. The applicant shall bear all costs associated with said notification.
  - 5) A report with before and superimposed after photo simulations from various locations of the story pole and to scale superimposed photo simulations of the proposed facility when completed shall be provided as part of the application.

***Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment***

- a) The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” for an application qualifying for the streamlined process.
- b) An application to increase the parameters of an approved wireless telecommunications facility as it relates to height, profile, number of co-locations or footprint shall not qualify for streamlined treatment under this Chapter.
- c) Small Cell Sites. An application proposing the use of small cell technology in the public rights-of-way that does not increase the height of an existing structure being attached to by more than four (4) feet shall be entitled to the streamlined process. If increasing the height of a building by between four (4) feet and eight (8) feet the application may also be reviewed under the streamlined process, provided the applicant will install an RF translucent false facade or parapet that matches the style, color and texture of the building.
- d) Attachments to Buildings. To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.
- e) Attachments to Water Tanks. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard.
- f) The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all City, State, Federal and ANSI/TIA-222 structural requirements for loads, including wind and ice loads.

### ***Section 10-16.113 Small Cell and Small Wireless Facilities***

- a) Administrative Review. Small wireless facilities to be located on an existing support structure that do not involve a new support structure or substantial modification of an existing facility shall qualify for an administrative application review and permitting process.

An application for a substantial modification/co-location or new support structure shall not qualify for administrative review and permitting under this Chapter.

- b) Variances. Any variance from the regulations contained in this Section shall be subject to a test of (1) technological impracticability; or (2) commercial impracticability; or (3) both, in relation to the area intended to be served by the proposed facility; and (4) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.
- c) Batched Applications. An applicant, or its agent of record, may submit applications for multiple facilities or locations with the following conditions that are intended to ensure compliance with the FCC's 'Shot Clock' requirements:
  - 1) No single batched submittal shall contain more than five (5) applications;
  - 2) There must be a minimum of seven days between submittals of batched applications;
  - 3) No more than four (4) batched applications shall be accepted in any thirty (30) consecutive day period.
  - 4) The individual locations or sites within a batched application are severable and may be treated and permitted individually.
- d) Required Application Information. The information required to be provided in an application under this Section is as follows.
  - 1) The name, address, phone number and e-mail address of the person preparing the application;
  - 2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided for both parties.
  - 3) The nearest postal address and tax map parcel number of the subject property.
  - 4) The zoning district or designation in which the subject property is situated.

- 5) For all new facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.
- 6) For all new facilities, a separate list of all frequencies licensed for the carrier, but not intended to be initially activated.
- 7) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
- 8) Transmission and maximum effective radiated power of the antenna(s).
- 9) Written commitment statements that:
  - a) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;
  - b) The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
  - c) The Applicant commits to fully and completely indemnify the City for and from the applicant's use of the City's right-of-way.
- 10) A general description of the proposed scope of work and the specific purpose(s) of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.
- 11) Certified detailed construction drawings and site plan, including but not limited to the following information:
  - a) If not to be located in the public rights-of-way, the location of the nearest residential structure and any unoccupied but habitable structure.
  - b) If not to be located in the public rights-of-way, the location, size and height of all existing and proposed structures on the property that are more than six (6) feet in height and are not buildings.
  - c) If not to be located in the public rights-of-way, the location of enclosures and cabinets on the property on which the structure is or will be located that are related to the subject of the application.



- d) A site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of :
    - 1) all boundaries;
    - 2) access drives;
    - 3) landscaping and buffers;
    - 4) fencing;
    - 5) underground utilities of any kind; and
    - 6) any easements.
  - e) Elevation drawings showing the profile or the vertical rendition of the support structure for the facility, and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade and lighting.
  - f) Proposed electrical and grounding plans for the facility.
- 12) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.
- 13) The type of support structure to be used and a structural analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.
- 14) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of any existing structure to be used or modified, using the most recently officially adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices.
- 15) No authorization shall be issued for any structure where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.
- 16) An RF emissions report, with calculations, showing full compliance with all requirements and practices set forth by all applicable regulations, including but not limited to the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 and OSHA's regulations regarding RF emissions.
- 17) In certain instances, the City may deem it appropriate to have on-site RF compliance testing of the facility done after the construction or modification of the facility to determine compliance with all applicable regulations, including but

not limited to OET 65 regarding RF emissions and/or OSHA's regulations regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a certificate of compliance.

- 18) A signed statement of commitment that the applicant will expeditiously remedy any physical or RF-related issues, including interference with other wireless devices or services.

e) Construction in the Public Rights-of-Way

- 1) All construction and maintenance shall at all times comply with applicable portions of all federal, State and local safety and safety-related codes, rules and regulations, as well as the City's right-of-way use and occupancy regulations.
- 2) No equipment or work associated with a small wireless facility shall interfere with, endanger, hamper, impede or incommode access to any utility or any other facility in the public right-of-way.
- 3) No wireless facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the public right-of-way or any vehicular or pedestrian way.
- 4) All work and installations on utility poles or light 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.
- 5) Attachment to Existing Structures in the Public Rights-of-Way
  - a) Utility Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the utility pole to be attached to immediately prior to attachment.
  - b) No portion of any antenna or wireless equipment shall be less than ten (10) feet above the ground, except that above any drivable road surface, no portion of any antenna or wireless equipment shall be less than twenty four (24) above the surface if attached to a utility pole or less than sixteen feet and one-half (16.5) feet above the surface if attached to a light pole
  - c) Light Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the light pole to be attached to immediately prior to attachment.
  - d) No utility or light pole shall ever exceed the lesser of fifty (50) feet or the maximum permitted height for the zoning district in which it is located.

- e) Except for the electric meter, all accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault(s).
- f) All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety-related codes.
- g) New and Replacement Poles. Primarily but not exclusively for aesthetic reasons, the City reserves the right to in certain instances and at applicant's cost require a new pole, or a replacement pole if a new pole is needed to accommodate wireless equipment. The new or replacement pole shall be a hollow metal or non-corrodable functionally equivalent structure that is in keeping with the nature and character of the surrounding area or neighborhood.
- h) Aesthetics/Appearance:
  - 1) Antenna Size. All small cell or DAS antennas and equipment attached to and directly associated with the antenna(s), excluding cabling, shall cumulatively not exceed three cubic feet (3 cu.ft.) in volume, nor be larger than two (2) feet in height.
  - 2) Lateral Extension. If permitted to be mounted externally, no wireless antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.
  - 3) Point of Attachment of Antennas. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
  - 4) Color. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
  - 5) Placement of Electronic Equipment. All electronic equipment not attached to the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.
  - 6) All accessory equipment not directly attached to the wireless antennas shall be installed underground in waterproof vaults.

7) All transmission or distribution cable or fiber shall be installed underground.

6) New Structures in the Public Rights-of-Way

- a) Any variance or relief from the following standards must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.
- b) Any relief or variance granted may contain one (1) or more conditions;
- c) New support structures shall, at the Planning Director's option, be hollow metal or made of a non-conductive, non-corrodable material of sufficient interior diameter to accommodate inside it the antenna(s) and all cabling or wiring attached to the antenna, and shall be of a color in harmony with the surrounding area or neighborhood that is acceptable to the Planning Director;
- d) Height: No support structure, regardless of the type of structure, may i) be taller than the immediately adjacent utility poles or public lighting structures; or ii) the lesser of the maximum permitted height for the zoning district in which it is located or fifty feet (50') in total height, including any attachments of any kind associated with the Wireless Facility;
- e) Not recognizable: A small wireless facility shall not be easily recognizable as a wireless facility by a layperson;
- f) Placement of antenna(s): All antennas, cabling and equipment directly associated with the antennas shall be contained inside the new support structure;
- g) No antenna shall be mounted on the side of a new utility or light pole, except that any antenna that for justifiable reasons cannot be contained inside the support structure shall be mounted so as to be the least visually intrusive reasonably possible given the facts and circumstances;
- h) Lateral protrusion: No antenna or equipment directly associated with an antenna shall protrude laterally beyond the outer diameter of the support structure, unless relief is requested in writing and approved;
- i) Accessory equipment: All accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault;
- j) Any new support structure shall be designed as a decorative structure and shall be in keeping with the nature and character of the surrounding area or neighborhood;

- k) No antenna shall be larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure as measured at the point of attachment to the structure;
- l) For any light pole that has an extending arm for the light fixture, unless mounted inside the pole or on the top of the pole, antenna shall be mounted so as not to be easily distinguishable from the light fixture.
- m) If externally mounted, the point of attachment to the top of a structure shall not be more than three inches (3") below the bottom of an antenna, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- n) Antennas and any exposed element of such shall be of a color that as closely as is reasonably possible matches that of the support structure.
- o) All equipment other than the antenna(s) shall be placed underground in a weatherproof vault or contained within the base of the support structure.
- p) A permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless it lapses or expires sooner or is revoked.
- q) Pursuant to the preceding subsection (p), at the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- r) A permittee may apply for a new permit within the one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's then-current code requirements for wireless telecommunications facilities.

#### 7) Non-Conforming Wireless Facilities in the Public Rights-Of-Way

- a) Non-conforming wireless facilities are those facilities that in one or more ways do not conform to this Chapter.
- b) Non-conforming wireless facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this Chapter; 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 Chapter 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 of any decision of the Planning Director made pursuant to this section to the City Council. 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 i) the amount of investment or original cost; ii) present actual or depreciated value; iii) dates of construction; iv) amortization for tax purposes; v) salvage value vi) remaining useful life; vii) the length and remaining term of the lease under which it is maintained, if any; and viii) the harm to the public if the structure remains standing beyond the prescribed amortization period, and may set an amortization period accordingly for the specific property.

## 8) Construction on Private Property

### a) New Structures.

Notwithstanding the requirements for new structures in public rights-of-way, the following shall apply to new structures on private property.

1. No new tower of any kind that is built to accommodate a small wireless facility may be built on private property in a single- or multi-family residentially zoned district or neighborhood, or within one-thousand (1,000) feet of the border of such a district or neighborhood. Notwithstanding anything to the contrary as regards compatible use designation, this requirement shall not be deemed in violation of any compatible use law, rule or regulation.

### 2. Aesthetics/Appearance:

- a) Height: The maximum allowed height for new support structures, but not an as-of-right height, shall be the lesser of i) the maximum height permitted for the zoning designation in which it is to be located; or ii) fifty (50) feet above existing pre-construction grade level.

### 3. The support structure shall

- a) be a hollow, non-wooden, non-corrodable structure of sufficient interior diameter to accommodate the antenna(s) and cabling or wiring inside it, and shall be of a color acceptable to the Planning Director;
- b) not be more than three inches (3") below the bottom of an antenna that is attached to the top of the structure, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;

4. Antennas shall be no larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure at the top of the structure at the point of attachment;
5. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
6. All equipment other than the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

***Section 10-16.114 Procedural Requirements before Action on any Application Taken***

- a) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- b) The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- c) Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may (1) approve; (2) approve with conditions; or (3) deny a permit or administrative authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof for compliance with this Chapter or the need for something not allowed, shall always be upon the applicant.
- d) All application approvals shall contain various written conditions of approval that are required (1) prior to building permit issuance, and (2) prior to final inspections / certificate of completion
- e) If the city approves the special use permit or administrative special use permit for the facility, then a notice of decision shall be posted within a public area of City Hall and mailed to the applicant within ten (10) working days of the City's action. the special use permit or administrative special use permit shall be effective ten (10) working days after the posting or mailing of the approval decision.
- f) If the City denies the special use permit or administrative special use permit for the facility or the modification, then the applicant shall be orally notified of such denial with specific reasons for such denial by the Planning Department or at the Commission Meeting depending on the reviewing body, and in writing within 30 calendar days of the decision, and shall set forth in writing the reason or reasons for the denial.
- g) Any discretionary decision may be appealed by the applicant or any person affected by a determination or decision. Discretionary decisions made by the Planning Department are appealable to the Planning Commission while Planning Commission decisions are appealable to City Council as outlined in the City of Hercules Zoning Chapter 44.

### ***Section 10-16.115 Procedural Requirements for Granting a Special Use Permit***

- a) In addition to the above listed Section 10-16.113, “Procedural Requirements before Action on any Application Taken,” the following procedures shall apply where a special use permit is requested
- b) The City shall schedule a public hearing(s) once it finds the application is complete (and that the applicant has held a community outreach meeting) and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a special use permit or administrative special use permit, require such additional information as it deems necessary and is not prohibited from requiring as it relates to the issue of the siting, construction or modification of or at a wireless facility.
- c) Required Findings: Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City must make the following findings prior to approving a special use permit, unless there is clear and convincing technical evidence that the requirements in the Chapter are not possible to achieve or relief has been requested and an exception is warranted based on the facts and environmental/technical circumstances involved:
  - 1) The facility does not conflict with safety and safety-related codes and requirements;
  - 2) The facility conforms to the City’s policy of concealment;
  - 3) The facility does not conflict with the historic nature or character of a neighborhood or district;
  - 4) The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
  - 5) The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
  - 6) The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
  - 7) The facility does not conflict with the provisions of this Chapter;

### ***Section 10-16.116 Reasons for Denial***

- a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
  - 1) Conflict with safety and safety-related codes and requirements;
  - 2) The facility would not conform to the City’s policy of concealment;
  - 3) Conflict with the historic nature or character of a neighborhood or district;
  - 4) The use or construction of facilities is contrary to an already stated purpose of a specific zoning or land use designation;



- 5) The placement and location of facilities would create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
- 6) The placement and location of a facility would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
- 7) Conflicts with the provisions of this Chapter;

***Section 10-16.117 Assignment/Transfer, Default/ Revocation, and Termination of Administrative Special Use Permits or Special Use Permits for Wireless Telecommunications Facilities***

The extent and parameters of a special use permit or administrative special use permit for a facility shall be as follows:

- a) A special use permit or administrative special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- b) A transfer, assignment or other conveyance of the special use permit or administrative special use permit shall require the written commitment of the new holder of the special use permit or administrative special use permit to abide by all applicable laws, rules and regulations, including but not limited to this Chapter.
- c) If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit or administrative special use permit, then the City shall notify the holder of the special use permit or administrative special use permit in writing of such violation. A permit or administrative special use permit holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the special use permit or administrative special use permit shall be subject to revocation.
- d) Following notice and an opportunity to cure, and if not cured, a special use permit or administrative special use permit granted under this Chapter may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as shown in the penalty provisions of this Chapter.
- e) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the special use permit and property owner of record.
- f) Following the original notice and an opportunity to cure as relates to a given Facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

### ***Section 10-16.118 Responsible Party(s)***

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (a) the physical and safe condition of the facility and all components on the site related to the facility; (b) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (c) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Chapter, other City regulations, and any City issued special, administrative or conditional use permits or building permits.

### ***Section 10-16.19 Removal and Performance Security***

- a) Support Structure Removal and Performance: The applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least seventy-five thousand dollars (\$75,000) for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.
- b) Attachments Performance Security: The owner of any equipment attached to a support structure shall be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of five thousand dollars (\$5,000).

### ***Section 10-16.120 Liability Insurance***

- a) A holder of a special use permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below, or as modified from time to time by City Council usually in the form of a resolution:
  - 1) Commercial general liability covering personal injuries, death and property damage: two million dollars (\$2,000,000) per occurrence/\$4,000,000 aggregate; and
  - 2) Automobile Coverage: \$2,000,000.00 per occurrence/four million dollars (\$4,000,000) aggregate; and

- 3) A three million dollar (\$3,000,000) umbrella coverage; and
- 4) Workers' compensation and disability: statutory amounts.
- b) For a facility located on City property, the commercial general liability insurance policy shall specifically name the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents and consultants as additional insureds.
- c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days' prior written notice in advance of the cancellation of the insurance.
- e) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the building permit, the holder of the special use permit or administrative special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- g) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Chapter.

### ***Section 10-16.121 Indemnification***

- a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a special use permit for a wireless telecommunications facility.

### ***Section 10-16.122 Security***

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- a) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- b) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

### ***Section 10-16.123 Signage***

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the tower owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

### ***Section 10-16.124 Reservation of Authority to Inspect Wireless Telecommunications Facilities***

- a) In order to verify that the holder of a special use permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Chapter, the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.
- b) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions pursuant to 10-16.128. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

### ***Section 10-16.125 Removal or Moving of Wireless Telecommunications Structures and Facilities***

- a) If attached to an existing structure, unless the Planning Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another,

or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.

- b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon (1) the provision of convincing evidence satisfactory to the Planning Commission of the need to move or relocate the facility; and (2) convincing evidence satisfactory to the Planning Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.
- c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk, City Manager, Finance Director, Planning Director, and Mayor prior to abandoning any facility.
- d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.
  - 1) A facility has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
  - 2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
  - 3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required special use permit or administrative special use permit, and the special permit or administrative special use permit may be revoked.
  - 4) If the City makes a determination as noted in subsections (d)(2) or (3) of this section, then the City shall notify the holder of the permit or administrative special use permit for the facility within forty-eight (48) hours that said facility is to be brought into compliance and conformity within 30 days or be removed as listed below (unless immediate health and safety risk exists).
  - 5) The holder of the special use permit or administrative special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.
  - 6) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or special use permit holder.

- 7) If the City removes, or causes Facilities to be removed, and the owner of the Facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the facility abandoned, and sell it.
- 8) Notwithstanding anything in this Chapter to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the special use permit or administrative special use permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Chapter and utilize the performance and removal bond.

### ***Section 10-16.126 Penalty***

- a) In the event of a violation of this Chapter, or any special use permit or administrative special use permit or building permit issued pursuant to this Chapter, the City may impose and collect, and the holder of the special use permit or administrative special use permit shall pay to the City, fines or penalties as established by the City and as allowed by State law.
- b) Notwithstanding anything in this Chapter, the holder of the special use permit or administrative special use permit for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter or any section of this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit or administrative special use permit. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Chapter.
- c) Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney on behalf of the City in the amount of one thousand dollars (\$1,000) for each such violation. Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. If two (2) or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the civil penalty set forth in this section. Amounts recovered under this Section shall be deposited into a fund carried upon the financial records of the City which shall be used exclusively for the maintenance and/or removal of telecommunications facilities, including but not limited to equipment cabinets, in the City of Hercules.
- d) Criminal Penalties for Violation. A violation of any provision of this Chapter is an infraction punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation occurring within one (1) year as defined in Government Code Section 36900(c). Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. At the City Attorney's discretion, serious violations may be prosecuted as misdemeanors pursuant to Government Code Section 36900.

- e) Injunctions. In addition to all other actions and remedies, civil or penal, authorized by law, the City Attorney is authorized to file an action in court seeking injunctive relief to enjoin a violation of any provision of this Chapter or to prevent a threatened violation of any provision of this Chapter. The injunctive relief sought in any such action may be prohibitory, mandatory, or both. (Ord. 339 § 1 (part), 1997)

### ***Section 10-16.127 Relief***

- a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a special use permit or administrative special use permit, or in the case of an existing or previously granted conditional use permit, or special use permit or administrative special use permit, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- b) If relief waiver, or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal amendment of the application, including the payment of all fees and charges.
- c) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- d) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- e) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

### ***Section 10-16.128 Adherence to State and/or Federal Rules and Regulations***

- a) To the extent that the holder of a special use permit or administrative special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a special use permit or administrative special use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative special use permit for wireless telecommunications facilities, then the holder of such a special use permit or administrative special use permit shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed

and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

### ***Section 10-16.129 RF Emissions***

- a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, but no longer than every five (5) years, and that all users of the facility cooperate with the party responsible for such verification.
- b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within one hundred (100) feet of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

### ***Section 10-16.30 Conflict with Other Laws***

Where this Chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Chapter shall apply.

### ***Section 10-16.131 Definitions***

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Administrative Special Use Permit"** means the official document or permit (processed by City Staff or their assignees in writing) by which an applicant can carry out an "Eligible Facility" project and then apply for a building permit.
3. **"Amend", "Amendment" and "Amended"** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
4. **"Applicant"** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.



5. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
6. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
7. **“Antenna Array”** is a set of individual **antennas** used for transmitting and/or receiving radio waves, connected together in such a way that their individual currents are in a specified amplitude and phase relationship.
8. **“City”** means the City of Hercules, California.
9. **“City Council or Council”** means the City Council of the City of Hercules.
10. **“Co-location”** means the use of an approved telecommunication structure to support Antenna for the provision of multiple wireless services.
11. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
12. **“Commission”** means the Planning Commission of the City of Hercules.
13. **“Complete” Application** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application and that all information is true, accurate and correct, and all deposits have been paid to the City.
14. **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Telecommunications Facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.
15. **“DAS”** or **“Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
16. **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
17. **Eligible Facility** means an existing properly permitted wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
18. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
19. **“FCC”** means the Federal Communications Council, or its duly designated and authorized successor agency.

20. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
21. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a Modification of the Facility.
22. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a Wireless Facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment.. Modification and the type of Modification shall be defined as set forth in FCC Report and Order 14-153, as modified from time to time and incorporated herein by reference.
23. **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
24. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
25. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
26. **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
27. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
28. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a properly permitted Wireless Facility that will change the visible appearance of the facility from that originally permitted.
29. **“Small Cell”** means a low-powered RF node, the antennas of which are significantly smaller than tradition ‘macro site’ antennas and have a significantly smaller service area, typically anywhere from 10 meters to one half (1/2) mile.
30. **“Special Use Permit”** means the official document or permit (usually in the form of a Planning Commission or City Council Resolution) by which an Applicant is allowed to file for a building permit to construct and use a Facility as granted or issued by the City, including for a Substantial Modification. Prior to the implementation of this Chapter, a Conditional Use Permit process was utilized.
31. **“State”** means the State of California.
32. **“Structural Capability”** or **“Structural Capacity”**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
33. **Substantial Modification** means a change or Modification that

- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or (c) existing the City's maximum permitted height or
  - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance within the City's concealment requirements; or
  - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
34. **"Telecommunications"** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
35. **"Telecommunications Site"** See definition for Wireless Telecommunications Facilities.
36. **"Telecommunications Structure"** means a structure (i.e. building, utility poles, street lights or other similar structure) used to support equipment used to provide wireless communications.
37. **"Temporary"** means not permanent in relation to all aspects and components of this Chapter, something intended to, and that does, exist for fewer than ninety (90) days.
38. **"Tower"** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
39. **"Wireless Telecommunications Facility or Facilities (WTF or WTFs)"** means and includes a **"Telecommunications Site"** and **"Personal Wireless Facility"**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and enclosures, cabinets and other structures associated with the Facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.