

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORWALK REVISING REGULATIONS APPLICABLE TO THE INSTALLATION AND OPERATION OF WIRELESS TELECOMMUNICATIONS FACILITIES AND AMENDING THE NORWALK MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF NORWALK DOES ORDAIN AS FOLLOWS:

Section 1. Section 17.02.295 is added to Chapter 17.02 of the Municipal Code to read as follows:

“17.02.295. Wireless Telecommunications Permit.

A. As set forth in Article IV of Chapter 17.04, the Reviewing Authority may grant a Wireless Telecommunications Permit. In the granting of any Wireless Telecommunications Permit, the Reviewing Authority may impose such conditions as it determines are necessary and reasonable to protect the best interests of the surrounding property or neighborhood and to ensure compliance with the general purpose and intent of this title and the general plan, and shall impose such conditions as are required by the provisions of this title.

B. Supplemental Application Requirements.

1. Purpose. This section sets forth the application submittal requirements for a Wireless Telecommunications Facilities permit. The purpose of this section is to ensure that Article IV of Chapter 17.04 is implemented to the extent permitted by the Telecommunications Act of 1996.

2. The applicant shall provide the following supplemental information at the same time a Wireless Telecommunications Facility Permit application is submitted to the Director.

a. An accurate map that contains the proposed site and details existing Wireless Telecommunications Facility locations owned and operated by the applicant within the City from the date of application submittal.

b. An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and providing technical data sufficient to justify the proposed height of the proposed Wireless Telecommunication Facility.

c. An alternative configuration analysis, assessing the feasibility of alternative Wireless Telecommunications Facility construction configurations - both at the proposed site and in the surrounding vicinity - which would result in a more visually compatible antenna(s). This analysis shall include an explanation of why other Wireless Telecommunications Facility construction configurations were not selected.

d. A projection of the applicant's anticipated future Wireless Telecommunications Facility siting needs within the City, which information may be used by the

City as part of a master planning effort designed to ensure a more planned, integrated and organized approach to Wireless Telecommunications Facility siting.

e. An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the Wireless Telecommunications Facility is meant to close, and describing how the coverage gap will be filled by the proposed installation.

f. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the Wireless Telecommunications Facility. The analysis shall include photo simulations and other information as necessary to determine the visual impact of the Wireless Telecommunications Facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the Wireless Telecommunications Facility with the surrounding area.

g. The height and diameter of the facility, together with evidence that demonstrates that the proposed Wireless Telecommunications Facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. If the Facility will exceed the maximum permitted height limit, a discussion of the physical constraints (topographical features, etc.) making the additional height necessary shall be provided.

h. A description of the maintenance and monitoring program for the Wireless Telecommunications Facility.

i. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed Wireless Telecommunications Facility wherever technically and economically feasible and aesthetically desirable.

j. A written description of any good faith efforts to collocate the proposed Wireless Telecommunications Facility on another site or building, including map of the sites, engineering information and letters from the owners of the site describing why co-location would not be feasible.

k. A written description of all Accessory Wireless Equipment for the Wireless Telecommunications Facility. Describe the function of this ancillary equipment and the need to locate same on or near the Wireless Telecommunications Facility.

l. An alternative site analysis, assessing the feasibility of alternative sites, including the potential for co-location, in the vicinity of the proposed site. If the proposed site is in a residential zone or in the public right-of-way, the alternative site analysis shall specifically include an evaluation of the availability and feasibility of potential alternative sites located outside those areas. The alternative site analysis shall include a map that shows other potential stand alone locations for the proposed Wireless Telecommunications Facility that have been explored, and shall describe why the proposed location is superior to other potential locations.

m. Noise/acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties.

n. A conceptual landscape plan showing existing trees and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

o. The Director may require additional information related to topography, including slopes, contours and proposed grading.

p. Deposit for a third party peer review as set forth in paragraph D of this section in an amount set by resolution by the City Council.

q. If the application is for a Wireless Telecommunication Facility in the public right of way, the applicant is a telephone corporation and has been issued a certificate of public convenience and necessity issued by the California Public Utilities Commission.

r. Any other information determined necessary by the Director may be required.

C. Review of Application

1. The Director may administratively review and approve an application for a Wireless Telecommunication Facility Permit if the Facility complies with article IV of Chapter 17.04 and as proposed is architecturally integrated with the existing development (i.e. building or structure) so as to be screened, camouflaged and visually nonobstrusive. Notwithstanding, the Director may at his or her discretion refer the Wireless Telecommunications Facility Permit to the Planning Commission for review.

2. The Planning Commission shall review applications not otherwise reviewed by the Director including but not limited to applications in the public right-of-way or located in a residential zone.

D. Peer Review.

1. The Director is authorized to retain on behalf of the City an independent technical expert to peer review any application for a Wireless Telecommunications Facility Permit. The review is intended to be a review of technical aspects of the proposed Wireless Telecommunications Facility and shall address all of the following:

- a. Compliance with applicable radio frequency emission standards;
- b. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- c. The accuracy and completeness of submissions;

- d. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
- e. The applicability of analysis techniques and methodologies;
- f. The validity of conclusions reached; and
- g. Any specific technical issues designated by the City.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule.

2. If a permittee proposes any modifications to any Wireless Telecommunications Facility Permit after said permit is granted, the permittee shall submit an application to the Planning Commission for consideration; provided, however, that the City and Planning Commission need not accept and/or process said application unless and until the permittee (i) demonstrates the existing Wireless Telecommunications Facility's compliance with all applicable local requirements; and (ii) certifies that the existing Wireless Telecommunications Facility complies with all applicable state, and federal requirements. In the case of collocations, minor structural modifications may be permitted if necessary to accommodate said co-located facility.

E. Notice and Hearing on Application for Wireless Telecommunications Permit. Upon the filing by the property owners or its authorized agent (if the agent provides written authority to the City that it is authorized to file the application such as a letter of authorization), of an application which sets forth fully the grounds for, and the facts claimed to justify the granting of a Wireless Telecommunications Permit, the Planning Commission shall give public notice, as provided in this title, of the intention to consider at a public hearing the granting of such permit, and shall hold at least one public hearing thereon. In the case of an application reviewed by the Director, no public notice or hearing is required.

F. Report on Findings and Decision. Following the closing of a public hearing, if applicable, on an application for a Wireless Telecommunications Permit, the Planning Commission shall, unless it adopts a motion directing that another public hearing be held thereon, adopt its findings by resolution. If the application is denied, the Planning Commission shall adopt a Resolution setting forth the findings for such denial based on substantial evidence contained in the administrative record. In the case of an application reviewed by the Director, the Director shall adopt its findings by report. The resolution or report shall recite, among other things, the facts and reasons which, in the Planning Commission or Director's opinion, make the granting or denial of a Wireless Telecommunications Permit necessary to carry out the provisions and general purpose of this Section and Article IV of Chapter 17.04, and shall order that a Wireless Telecommunications Permit is thereby granted or denied; and, if such resolution or report orders that the permit be granted, it shall also recite such conditions and limitations as are imposed.

G. Resolution or Report. The resolution of the Planning Commission, or in the case of an application reviewed by the Director, the report of the Director, granting or denying any application for a Wireless Telecommunications Permit, shall be promptly filed, shall be

numbered consecutively in the order of its filing, and shall become a permanent record in the file of the Department.

H. Notice of Decision. Not later than three calendar days following the filing of a resolution or report granting or denying a Wireless Telecommunications Permit, a copy of the resolution or report shall be delivered or mailed by certified or registered mail to the applicant or applicants, utilizing, in the case of mailing, any address shown on the application or other documents filed with the Department. Notice of the action granting or denying a Wireless Telecommunications Permit shall be delivered or mailed to each member of the City Council, the City Manager, the City Attorney, and each person who has filed with the department a request for notice of decision in the particular case. A copy of such report shall be posted in a prominent place in the City Hall, designated for such purpose by the City Manager, from not later than, three days following until at least the tenth day following the filing of the resolution or report, but failure to so post any such notice shall not extend the time of becoming effective of any decision of the Commission or Director.

I. Decision When Final—Appeal. The decision of the Planning Commission or Director shall become final and effective ten (10) calendar days after delivery or mailing of all of the notices required by Section 17.02.295(E) unless prior to five p.m. of the tenth day, either of the following has occurred:

1. A written appeal has been filed with the City Clerk by an applicant or by a person specially aggrieved; or

2. The City Council elects to review the decision of the Commission.

J. Appeal Procedure.

1. If an appeal in writing is filed with the City Clerk as provided in Section 17.02.295(F)(1) or if the City Council elects on its own motion to review the action of the Planning Commission as provided in Section 17.02.295(F)(2), the complete record of the case shall be transmitted to the Council. In the case of a decision by the Director, the complete record of the case shall be transmitted to the Planning Commission.

2. The Council shall hold one public hearing notice of which shall be given in the manner prescribed by Sections 17.02.050 and 17.02.060, within forty (40) days of the filing of a written appeal or the adoption by the Council of a motion to review the action of the Commission. In the case of an appeal to the Planning Commission, the Planning Commission shall hold one public hearing notice of which shall be given in the manner prescribed by Sections 17.02.050 and 17.02.060, within forty (40) days of the filing of a written appeal.

3. The reviewing body shall announce, within forty (40) days of the closing of the public hearing, its decision granting or denying a Wireless Telecommunications Permit by adoption of a resolution, which shall set forth the reasons for its decision and shall indicate wherein such decision conforms to the intent and purpose of this Section and Article IV of Chapter 17.04. In such proceedings, no finding, decision, order, stipulation or other action of the Commission shall bind the Council.

4. The action of the Council shall be final. The action of the Planning Commission may be appealed to the City Council pursuant to the provisions of this Section.

5. Within ten (10) calendar days following the adoption of the resolution, one copy thereof shall be forwarded to the applicant or the appellant or both, as the case may be, and one copy shall be transmitted to the Commission for filing.

K. Time Interval for Re-application for a Wireless Telecommunications Facility Permit. No permit application which has been denied in whole or in part shall be filed again within six months from the date of such denial except upon proof of changed conditions or by permission of the Director.

L. Expiration. Any Wireless Telecommunications Permit shall be null and void:

1. If not exercised within the time specified in such Wireless Telecommunications Permit or, if no date is specified, within one year from the date of approval of the Wireless Telecommunications Permit;

2. Upon revocation as provided herein.

M. Revocation. The Planning Commission may, after a hearing, compliance being had with applicable requirements of Chapter 17.02, Article I, revoke, modify or suspend any Wireless Telecommunications Permit on any one or more of the following grounds:

1. That the Wireless Telecommunications Permit was obtained by fraud or misrepresentation;

2. That the Wireless Telecommunications Permit granted is being, or within the recent past has been, exercised contrary to the terms or conditions of such approval or in violation of any statute, ordinance, law or regulation; or

3. That the use permitted by the Wireless Telecommunications Permit is being, or within the recent past has been, exercised so as to be detrimental to the public health or safety or as to constitute a nuisance.

4. Failure to comply with any condition of approval or the standards in Article IV of Chapter 17.04.

In the event of termination pursuant to this Section, the permittee shall remove its Wireless Telecommunications Facility at its own expense and shall repair and restore all property affected by the placement, maintenance, and removal of the Wireless Telecommunications Facility to a condition satisfactory to the Director.

N. Findings. A Wireless Telecommunications Facility Permit may be granted only if the following findings are made by the Reviewing Authority.

1. The proposed Wireless Telecommunications Facility has been designed to achieve compatibility with the community to the maximum extent reasonably feasible;

2. An alternative configuration will not increase community compatibility or is not reasonably feasible;

3. Alternative locations on the site will not increase community compatibility or are not reasonably feasible;

4. The location of the Wireless Telecommunications Facility on alternative sites will not increase community compatibility or is not reasonably feasible;

5. The proposed facility is necessary to close a significant gap in coverage and is the least intrusive means of doing so;

6. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed Wireless Telecommunications Facility wherever technically and economically feasible and where co-location would not harm community compatibility;

7. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare; and

8. In the case of a Wireless Telecommunications Facility in the public right of way, the applicant is a telephone corporation and has been issued a certificate of public convenience and necessity issued by the California Public Utilities Commission, which expressly states the applicant's authority to provide the telecommunications service the Applicant proposes to provide through the Wireless Telecommunications Facility, which is the subject of the application.

O. Appeal from Revocation or Modification of Wireless Telecommunications Permit. An appeal may be taken to the Council from the action of the Commission in revoking or modifying any Wireless Telecommunications Permit pursuant to this section. The procedures followed by the Council in such matters shall, in all respects, conform to the procedures established for the granting or denying of such Wireless Telecommunications Permits and appeals in connection therewith.

P. Unless otherwise required by California Government Code section 65964(b), and as that section may be hereafter amended, all Wireless Telecommunication Permits shall have a duration of no longer than ten (10) years. In accordance with requirements established by the Director, at the expiration of the time period set forth herein, the applicant may apply for an extension of the permit for a term of five (5) years with an optional additional five (5) year term. Such extensions shall be subject to the discretion of the Planning Commission who shall take account of at least the following factors: conformance with all conditions of approval of the permit as it was originally issued, operation of the facility in its intended manner, and conformance with all applicable laws, regulations, standards and updates thereof such as radio frequency emissions standards.”

Section 2. Article IV is added to Chapter 17.04 of the Norwalk Municipal Code to read as follows:

“ARTICLE IV

WIRELESS TELECOMMUNICATIONS FACILITIES

17.04.240. Purpose.

The Norwalk City Council finds and determines that the purpose of this Article is to provide a uniform and comprehensive set of standards for the permitting, development, siting, installation, design, operation and maintenance of Wireless Telecommunications Facilities in all zones within the City. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with Wireless Telecommunications Facilities. This article provides standards necessary for the preservation of land uses in the City and to promote the public health, safety, community welfare, and the aesthetic quality of City of Norwalk consistent with the goals, objectives and policies of the General Plan, while at the same time provide for orderly, managed and efficient development of Wireless Telecommunications Facilities in accordance with the state and federal laws, rules and regulations.

17.04.250. Definitions. Unless otherwise stated, the following definitions pertain to this Article and Section 17.02.295:

“Antenna” means any system of wires, poles, rods, discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antenna relating to personal wireless services as defined by the federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, when such system is used in Wireless Telecommunications Facilities. “Antenna” shall not include any satellite dish antenna or any antenna utilized for amateur radio, citizens band radio, television, AM/FM, or shortwave radio reception purposes.

“Building-Mounted” means mounted to the side of a building, to the facade of a building, or to the side of another structure such as a water tank, church steeple, freestanding sign, utility tower, light pole, or similar structure, but not to include the roof of any structure.

“Cellular” means an analog or digital Wireless Telecommunications technology that is based on a system of interconnected neighboring cell sites.

“Co-Located” means the locating of Wireless Telecommunications equipment from more than one provider on a single Wireless Telecommunications facility.

“Director” means the Director of Community Development of the City of Norwalk or his or her designee.

“Ground-Mounted” means mounted to a pole, monopole, tower, or other freestanding structure specifically constructed for the purpose of supporting an antenna.

