



# Administrative Report

## PUBLIC HEARING

**TO:** PLANNING COMMISSION

**FROM:** Robert Clark, City Manager

**DATE REPORT**

**PREPARED:** January 28, 2015

**MEETING DATE:** February 4, 2015

**SUBJECT:** Text Amendment to the Ojai Municipal Code repealing Section10-2.1712 and amending Chapter 14 of Title 10 relating to regulation of wireless telecommunications faculties

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### **Recommendations**

1. Conduct a Public Hearing; and
2. Adopt Planning Commission Resolution recommending that the City Council adopt proposed Zone Text Amendment (TA 14-01) based on the findings contain therein, repealing Section10-2.1712 and amending Chapter 14 of Title 10 of the Ojai Municipal Code relating to regulation of wireless telecommunications facilities and forward a recommendation to the City Council make the necessary California Environmental Quality Act (CEQA) findings and finding that the proposed project is exempt from CEQA; and
3. Recommend that the City Council direct the Planning Commission to review the height limits in all zones and make recommendations to the City Council.

### **Discussion**

The current City code section dealing with telecommunications facilities (Section10-2.1712) was adopted in 2004 and does not take into account changes in federal regulations that have occurred since that time. On April 8, 2014 the City Council adopted an urgency ordinance establishing a 45 day moratorium on new telecommunications pending development of new local regulations. The moratorium was extended on May 13, 2014 and expires on April 7, 2015.

Work on the proposed new Ordinance was on hold pending the issuance of new federal regulations. On October 17, 2014 the Federal Communications Commission adopted a draft order. The order was published in the Federal Register on January 8, 2015. Provisions relating to the “shot clock” take effect on April 9, 2015. All other provisions take effect on February 8, 2015. The “shot clock” provisions require that local agencies take action on most telecommunication facility applications within 60 days irrespective of any local moratorium.

The schedule for adopting a new local ordinance in Ojai is:

December 9, 2014: Meeting with industry representatives  
January 20, 2015: City Council/Planning Commission workshop  
February 4, 2015: Planning Commission hearing  
February 24, 2015: City Council hearing  
March 10, 2015: Second reading and adoption  
April 10, 2015: Effective date

At the joint workshop, our special counsel for telecommunication facilities issues, Jonathan Kramer and Tripp May of Telecom Law Firm, PC, reviewed the federal regulations and the proposed Ordinance for the City of Ojai. A summary of the telecommunications regulations is attached. Several issues were raised at, or subsequent to the workshop, that the Planning Commission should address in more detail:

**Zoning Text Amendment Guidelines/General Consistency:**

An amendment to the General Plan, the Zoning Map, or these Zoning Regulations, may be approved only if the following findings are made, as applicable to the type of amendment in compliance with State law ([Government Code](#) Section 65800, et. seq.). It is the responsibility of the applicant to establish evidence in support of the required findings.

- (a) Mandatory findings required for all amendments (e.g., General Plan, Zoning Map, and these Zoning Regulations):
  - (1) The proposed amendment ensures and maintains internal consistency with the actions, goals, objectives, and policies of the General Plan, and would not create any inconsistencies with these Zoning Regulations, in the case of an amendment of these Zoning Regulations;
  - (2) The proposed amendment would not be detrimental to the public convenience, health, interest, safety, or welfare of the City; and
  - (3) The proposed project has been reviewed in compliance with the provisions of CEQA and the City's environmental review procedures.
- (b) Additional finding for Zoning Map amendments: The site(s) is/are physically suitable (including access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).
- (c) Additional finding for amendments of these Zoning Regulations: The proposed amendment is internally consistent with other applicable provisions of these Zoning Regulations.

The proposed amendment has been review for consistency with the General Plan and The City of Ojai's Municipal Code and has been found to be consistent and not detrimental to the public convenience, heath, interest, safety or welfare of the City. This is based on the fact the ordinance as proposed (Attachment B) seeks to bring the City's Wireless regulations into compliance with Federal regulations while maintaining the City's values and goals to the extent allowed by law.

### *Location Guidelines*

Section 10-14.050 (b)(1) establishes location guidelines. When an application for a proposed new wireless facility is reviewed by the Planning Commission one of the key issues will be whether or not the proposed site constitutes the least intrusive means to address a significant gap which is both technically feasible and potentially available. Applicants will be required to provide an alternate site analysis that shows at least five such sites. The location guidelines are intended to reflect our local judgment in Ojai as to what types of sites are preferred and what types of sites are disfavored. This section should be reviewed very carefully to make sure the commission agrees that it accurately reflects our local priorities. A zoning map is attached to help with this review.

### *Height Requirements*

Section 10-14.050(b)(4) states that all new facilities and substantial changes to existing facilities shall comply with the applicable zone height limit. Members of the public have noted that the Open Space and Public Quasi-Public zones do not currently have specified maximum heights. The current height limits are shown in the following table:

Zone	Height Limit
Residential	25(1)(2)
Commercial	35
Business Professional	30
Village Mixed Use	35
Light Industrial	35
Agricultural	30
Institutional/Recreational	35
Open Space	none(3)
Public Quasi-Public	none(3)
Planned Development	none(3)

(1) Architectural features to 30' subject to design review

(2) Solar access height limit applies

(3) Determined through review process

It is recommended that the Planning Commission request permission to review the height limits in all zones as a subsequent step, and make recommendations to the City Council.

### *Noise Requirements*

Section 10-14.050(b)(7) states that equipment associated with telecommunications facilities must adhere to the existing noise regulations. Members of the public expressed concern that air conditioning units or other equipment near residential uses may emit too much noise. The current noise regulations are attached for review.

### *Director Approvals*

Section 10-14.060 provides a process as required by federal law for ministerial approval of modifications to eligible facilities that do not substantially change the physical dimensions as

defined by federal regulation. These types of applications are acted on by the Director of Community Development (potentially in consultation with an independent consultant) without public input. Concern was expressed that there should be some mechanism for public notice that such an application is under consideration and/or some form of check and balance. If such notice were to be given, it would need to be very clear that the only issue that can be considered is whether or not the proposed facility exceeds the dimensions prescribed by law. As such it may be difficult for the public to see the disconnect between the City's notice and its non-responsibility for an approval mandated under federal law. In addition, the entire process, from acceptance of an application to issuance of a building permit, must occur in a very short 60 day period.

### **Public Notice**

Public notice of the proposed project was published in the Ojai Valley News at least 10 days prior to the public hearing. As the proposed project is a citywide text amendment the notice was published as a 1/8<sup>th</sup> page display ad.

### **Environmental Review**

Staff has reviewed the proposed Text Amendment and is recommending that the Planning Commission find that the project as proposed is exempt from CEQA pursuant to Section 15061(b)(3) and forward a recommendation to the City Council to approve the exemption.

The City finds that the proposed Text Amendment 14-01 "Wireless Communications Facilities" is exempt from CEQA review because there is no possibility that this text amendment to the zoning regulations, which does not directly authorize any new construction or development, may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. Text Amendment TA 14-01 "Wireless Communications Facilities" does not authorize any new construction or development; it clarifies and better articulates the already-existing standards for how the City reviews proposals to construct or modify wireless communications facilities. Each proposed wireless communication facility governed under the proposed ordinance will receive individualized CEQA review unless exempt under CEQA or preempted under federal law. Accordingly, the City finds that Text Amendment TA 14-01 is exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that it will have a significant effect on the environment.

In addition, the City finds that the regulations related to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 do not qualify as a "project" under CEQA Guidelines Section 15378(b)(5) because they merely create an administrative internal process to determine whether federal law mandates that the City "shall approve, and may not deny" a wireless permit application. Section 6409(a) requires that State and local governments "may not deny, and shall approve" any "eligible facilities request" for co-location or modification of wireless transmission equipment so long as it does not "substantially change the physical dimensions of the existing wireless tower or base station." Under CEQA Guidelines Section 15378(b)(5), a "project" does not include "administrative activities of governments that will not result in direct or indirect

physical changes in the environment.” Based on the following:

- 1) Regulations in the ordinance relating to Section 6409(a) constitute “administrative activities” of government because they create internal, ministerial procedures to identify when federal law preempts local zoning discretion; and
- 2) Regulations in the ordinance related to Section 6409(a) will not “result in direct or indirect physical changes in the environment” because federal regulations automatically grant approval on all permit applications for the co-location or modification of existing wireless towers and base stations so long as such collocation or modification does not substantially change the physical dimensions of the wireless tower or base station. Any physical changes in the environment will therefore “result” whether the City adopts the regulations or not.

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Submitted by  
Kathleen Wold, ACIP

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Submitted by  
Robert Clark, City Manager

Attachments:

- A – Summary of Wireless Regulations
- B – Proposed Planning Commission Resolution No. PC 15-
- C – Draft City Council Ordinance No. 15-\_\_\_\_
- D – Zoning Map
- E – Noise Regulations

## **Background and Summary**

### **1. Introduction & Background**

This draft ordinance arises from significant changes in federal laws that govern local authority over wireless facilities deployment. On February 22, 2012, Congress enacted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, which generally provides that State and local governments “shall approve, and may not deny” a request to collocate on or modify wireless transmission equipment on an existing wireless tower or base station so long as the proposal does not substantially change the physical dimension of that wireless tower or base station.

On December 17, 2014, the Federal Communications Commission adopted new regulations to accelerate wireless infrastructure deployment and implement Section 6409(a). These regulations generally (1) impose new limits on wireless permit applications and how municipalities review them, (2) define a “substantial change” with a one-size-fits-all cumulative limit on physical size increases, and (3) deem a permit granted when a municipality fails to act on the application within 60 days after submittal. The new regulations also included new procedural rules for sites not subject to Section 6409(a).

Given the broad changes at the federal level, the current wireless facilities standards and procedures in the Ojai Municipal Code no longer effectively regulate wireless deployments in a manner consistent with law. In response, staff, working with outside counsel, Telecom Law Firm, PC, has prepared a draft ordinance and this summary for consideration of the Planning Commission, City Council, and the public.

### **2. Summarized Ordinance Provisions**

#### **2.1. Definitions.**

New federal regulations include several new legally operative terms that municipalities must understand for compliance purposes. This section in the ordinance has been updated to reflect legally operative terms in accord with the FCC rules, and provide a reference for future staffers, officials, commissioners, and councilmembers.

#### **2.2. Applicable facilities.**

Section \_\_\_\_\_.030 is intended to broadly apply to all structures and equipment used to provide wireless services. The exemptions in subsection (c) follow from standard exemptions for cities, and special federal regulatory treatment afforded to amateur radios and certain over-the-air-receiving-devices (e.g., home satellite dishes).

#### **2.3. Application procedures in general.**

Section \_\_.040 requires a permit for all wireless facilities and changes to facilities, and establishes basic application review procedures that govern all permits contemplated in the ordinance.

### **2.3.1. Subsection (a)**

Subsection (a) divides all potential projects into two categories that depend on whether Section 6409(a) mandates approval or not. The ordinance requires a conditional use permit when Section 6409(a) does not mandate approval, and a design review permit when it does.

### **2.3.2. Subsection (b)**

Subsection (b) requires applicants to submit the initial permit application at a prior-scheduled appointment with staff from each department that will require an approval for the project. This procedure, adopted in several other California cities, helps to organize permit application intake, coordinate efforts between departments, and spot potential issues as soon as possible.

### **2.3.3. Subsection (c)**

Subsection (c) articulates the recently updated federally-mandated procedures to deem a wireless permit application incomplete. This provision provides practical guidance intended to assist planners understand somewhat complex rules.

## **2.4. Regulations for facilities subject to a conditional use permit.**

Section \_\_.050 sets out standards and procedures for a conditional use permit review under this ordinance. This section articulates location and design preferences that guide this discretionary review.

### **2.4.1. Subsection (a)**

Subsection (a) sets out detailed permit application content requirements. Under new federal rules, a permit application cannot be deemed incomplete based on materials or information not “publically-stated” before submittal. In essence, permit applications must explain the required information in explicit detail. This provision also allows the Director to expand or waive any requirement.

### **2.4.2. Subsection (b)**

Subsection (b) articulates location and design guidelines and standards for all facilities subject to the ordinance. In general, the ordinance expresses a preference for collocated facilities over new facilities, stealth or concealed facilities over visible facilities, and for facilities in industrial or commercial zones over facilities in open space and residential zones. Facilities must also conform to the generally applicable regulations (such as zone height, setbacks, and noise) for the proposed zone, and all applicable building and public safety regulations.

#### **2.4.3. Subsection (c)**

Subsection (c) articulates specific design preferences for wireless towers. The ordinance expresses a local value for wireless towers that blend with the natural and man-made backdrops in Ojai with the lowest feasible visual profile.

#### **2.4.4. Subsection (d)**

Subsection (d) articulates specific design preferences for base stations (*i.e.*, wireless antennas mounted on non-tower structures). The ordinance expresses a local values for base stations that architecturally integrate with the support structure, or that use the natural building features to conceal the transmission equipment.

#### **2.4.5. Subsection (e)**

Subsection (e) articulates specific design preferences for facilities in the public rights-of-way. Under California Public Utilities Code section 7901.1, as interpreted in *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, the municipal power to exercise “reasonable time, place and manner control” over how wireless providers access the rights-of-way includes aesthetic controls. The ordinance prefers facilities on arterial and collector streets over residential streets, undergrounded equipment over above-ground equipment, and for equipment mounted as close to the pole or tower as feasible.

#### **2.4.6. Subsection (f)**

Subsection (f) restates factors from the former Section 10-2.1712(c)(4) that the planning commission may consider when it evaluates whether to grant a conditional use permit. However, the ordinance includes revisions to allow the planning commission to consider other factors articulated in the ordinance, and does not require the planning commission to specifically find that it need not consider a listed factor. Given that no two wireless sites always involve the same considerations, a more flexible approach is intended to benefit the City and the applicants alike.

### **2.5. Regulations for facilities subject to a design review permit.**

Section \_\_.050 deals exclusively with design review permits (*i.e.*, permits submitted for review under Section 6409(a)). Unlike projects subject to a conditional use permit, federal law preempts local discretion over these projects so long as certain criteria are met. This section sets out standards and procedures—consistent with federal law—to determine whether a project submitted for design review qualifies for mandatory approval. Further procedures are included for cases in which those projects should be approved, and in cases when those projects should be denied.

#### **2.5.1. Subsection (a)**

Subsection (a) provides a top-level overview to explain the need for the regulations in this section. These provisions are also intended to provide context and primary source citations to

future planners, officials, commissioners, and councilmembers that must read, understand, and apply these regulations.

#### **2.5.2. Subsection (b)**

Subsection (b) explains the shorter, 60-day time for review for Section 6409(a) projects. This provision also underscores that *all other permits and approvals from all other departments* must be approved or denied within 60 days or federal regulations deem the permits granted.

#### **2.5.3. Subsection (c)**

Subsection (c) exists because federal regulations impose new limits on permit application content when Section 6409(a) applies. These provisions are designed to solicit only permitted information under the new federal rules. At the same time, subsection (c) requires applicants to disclose the relevant information needed to determine whether a proposed collocation or modification qualifies for mandatory approval under Section 6409(a).

#### **2.5.4. Subsections (d), (e) and (f)**

Subsections (d), (e) and (f) each set out the findings of approval for a design review permit based on new federal regulations. Section 6409(a) mandates approval for an “eligible facilities request” to collocate with or modify an existing wireless facility, so long as the proposal does not “substantially change the physical dimensions of the existing wireless tower or base station.” The FCC recently set out a relatively complex test for what constitutes a substantial change that depends on the structure type and location. These subsections break down these complex regulations into a checklist format that allows the Director (or a designee) to determine whether federal law mandates approval.

The substantive provisions track the language used in the FCC rules, and the checklist format is intended to provide clear guidance to both applicants and reviewers.

The provisions use the phrase “may not deny” rather than “shall approve” so that the Director does not technically violate the Code in the event that, for some unforeseen reason, the Director fails to affirmatively approve the application. This deviation from the statutory language in Section 6409(a) does not raise a legal concern because the FCC rules “deem granted” any project subject to Section 6409(a) that a local government does not affirmatively approve within 60 days from submittal.

#### **2.5.5. Subsection (g)**

Subsection (g) provides self-executing conditions of approval that attach to all design review permits under this ordinance. These “default” conditions are intended to protect the City in the event that a design review permit becomes deemed-granted. In the normal case where the Director (or designee) will affirmatively approve a design review permit, additional conditions may be added so long as such conditions do not violate state or federal law.

### **2.5.6. Subsection (h)**

Subsection (h) establishes a procedure to ensure that no controversies arise over projects submitted for a design review permit, but that should have been submitted for a conditional use permit. The primary concern is an open question about whether a permit application became deemed granted after 60 days passed without an approval or denial. The “denial without prejudice” closes the issue because a denied permit cannot possibly become deemed-granted. The grounds for denial derive from the FCC’s own criteria for projects that do not qualify for mandatory approval under Section 6409(a).

The fact that the denial comes without prejudice to the application is critical. After such a denial, the applicant can immediately resubmit the permit application—either under the conditional use permit process for the proposed site or under the same design review permit process but with a modified design to qualify for that process.

### **2.6. Independent consultant review.**

This provision allows the Director to retain outside help when needed and passes the reasonable costs onto the applicant. Costs are recovered through a deposit, and the applicant must pay all costs to the City before it may receive a permit.

### **2.7. Maintenance; Removal of abandoned facilities.**

These maintenance provisions provide general maintenance provisions common to other wireless ordinances in California. The removal provisions come from the current ordinance.

### **2.8. Ownership transfers.**

This provision requires the permit holder to provide written notice to the City after it transfers site ownership to a new transferee. The City has a legitimate interest in this information for code-enforcement purposes.

### **2.9. Permit terms; permit conditions.**

Section \_\_\_\_\_.110 establishes a maximum permit term and provides procedures for permit renewals. Subsection (a) complies with California Government Code Section 65964, which provides that public agencies must grant permits for at least ten years unless a public safety or substantial land use reasons justify a shorter term. Subsections (b) and (c) provide procedures for permit renewals and allows the City to attach reasonable conditions to permit renewals to promote the purposes in the ordinance.

### **2.10. Exception from standards.**

This provision creates a general exception to all standards in the ordinance, and operates as a “safety valve” to protect the ordinance as a whole from a facial or as-applied challenge. Under the Telecommunications Act of 1996, local governments cannot explicitly or effectively prohibit

personal wireless communications services. In the Ninth Circuit, an ordinance violates this statute when it prevents a wireless provider from mitigating a “significant gap” in its own service coverage through the “least intrusive means.”

The “exception from standards” is a mechanism that allows a wireless provider to build a site that does not conform to the standards in the ordinance, but only when it demonstrates that it qualifies for the exception under the conditions established by the Ninth Circuit, and only to the extent that it needs to deviate from those standards.

#### **2.11. Conflicts with other ordinances or regulations; Severability.**

Sections \_.130 and \_.140 contain standards provisions for newly adopted ordinances. Section \_.130 ensures that more recent regulations control over older regulations. Section \_.140 protects the ordinance as a whole in the event that any court determines that an individual provision violates or conflicts with a State or federal law.

### **3. Conclusion**

The purpose of the workshop is to review the regulatory framework within which the City must operate, and to review the provisions of proposed new wireless communication facilities ordinance for the City of Ojai.

**CITY OF OJAI**  
**PLANNING COMMISSION RESOLUTION NO. 15-\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION**  
**FORWARDING A FAVORABLE RECOMMENDATION TO THE CITY COUNCIL ON**  
**A CITYWIDE TEXT AMENDMENT (TA-14-01) REPEALING TITLE 10, CHAPTER 10,**  
**ARTICLE 17, SECTION 1712, AND AMENDING TITLE 10, CHAPTER 14 OF THE**  
**OJAI MUNICIPAL CODE-WIRELESS COMMUNICATIONS FACILITIES**

**WHEREAS**, the City of Ojai has proposed a Text Amendment to the City's Municipal Code repealing Title 10, Chapter 10, Article 17, Section 1712, and amending Title 10, Chapter 14 of the Ojai Municipal Code-Wireless Communications Facilities; and

**WHEREAS**, a public hearing was held by the Planning Commission on February 4, 2015, for consideration of Text Amendment 14-01 with notice of said hearing given by publishing a 1/8 page display ad in the *Ojai Valley News* at least 10 days prior to the public hearing; and

**WHEREAS**, after taking public testimony and the evidence presented from City staff including that presented in the staff report and its attachments finds that the Text Amendment 14-01 is consistent with the City's General Plan and City's Municipal Code; and

**WHEREAS**, based upon the foregoing facts and findings for Text Amendment 14-01, the Planning Commission hereby determines as follows:

- 1) The proposed amendment ensures and maintains internal consistency with the actions, goals, objectives, and policies of the General Plan, and would not create any inconsistencies with these Zoning Regulations, in the case of an amendment of these Zoning Regulations; and
- 2) The proposed amendment would not be detrimental to the public convenience, health, interest, safety, or welfare of the City; and
- 3) The proposed project has been reviewed in compliance with the provisions of CEQA and the City's environmental review procedures; and
- 4) The proposed amendment is internally consistent with other applicable provisions of these Zoning Regulations.

The proposed amendment has been reviewed for consistency with the General Plan and the City of Ojai's Municipal Code and has been found to be consistent and not detrimental to the public convenience, health, interest, safety or welfare of the City. This is based on the fact the ordinance as proposed (Attachment B) seeks to bring the City's Wireless regulations into compliance with Federal regulations while maintaining the City's values and goals to the extent allowed by law.

**WHEREAS**, the proposed project has been reviewed in compliance with the provisions of California Environmental Quality Act (CEQA) and the City's environmental review procedures and based on this review the Planning Commission forwards to the City Council a recommendation to approve the environmental determination based on the following:

The City finds that the proposed Text Amendment 14-01 "Wireless Communications Facilities" is exempt from CEQA review because there is no possibility that this text amendment to the zoning regulations, which does not directly authorize any new construction or development, may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. Text Amendment TA 14-01 "Wireless Communications Facilities" does not authorize any new construction or development; it clarifies and better articulates the already-existing standards for how the City reviews proposals to construct or modify wireless communications facilities. Each proposed wireless communication facility governed under the proposed ordinance will receive individualized CEQA review unless exempt under CEQA or preempted under federal law. Accordingly, the City finds that Text Amendment TA 14-01 is exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that it will have a significant effect on the environment.

In addition, the City finds that the regulations related to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 do not qualify as a "project" under CEQA Guidelines Section 15378(b)(5) because they merely create an administrative internal process to determine whether federal law mandates that the City "shall approve, and may not deny" a wireless permit application. Section 6409(a) requires that State and local governments "may not deny, and shall approve" any "eligible facilities request" for co-location or modification of wireless transmission equipment so long as it does not "substantially change the physical dimensions of the existing wireless tower or base station." Under CEQA Guidelines Section 15378(b)(5), a "project" does not include "administrative activities of governments that will not result in direct or indirect physical changes in the environment." Based on the following:

- 1) Regulations in the ordinance relating to Section 6409(a) constitute "administrative activities" of government because they create internal, ministerial procedures to identify when federal law preempts local zoning discretion; and
- 2) Regulations in the ordinance related to Section 6409(a) will not "result in direct or indirect physical changes in the environment" because federal regulations automatically grant approval for all permit applications for the co-location or modification of existing wireless towers and base stations so long as such co-location or modification does not substantially change the physical dimensions of the wireless tower or base station. Any physical changes in the environment will therefore "result" whether the City adopts the regulations or not.

**WHEREAS**, the environmental document is in the custody of the City of Ojai Community Development Department, located at Ojai City Hall, 401 S. Ventura Street, Ojai, CA 93023.

**NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF OJAI DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** That the Planning Commission determines that the above set forth findings are true and correct in regards to Text Amendment (TA 14-01) which findings are incorporated herein.

**SECTION 2.** The Planning Commission hereby forwards a recommendation to the City Council to approve Text Amendment TA 14-01 Wireless Communication Facilities.

**PASSED, APPROVED and ADOPTED** this 4<sup>th</sup> day of February 2015.

AYES:

NOES:

ABSTAIN:

ABSENT:

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Steve Foster, Planning Commission Chair

ATTEST:

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Kathleen Wold, AICP, Community Development Director

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

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

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

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

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

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

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

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

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

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

(a) **CEQA Guidelines Sections 15061(b)(3).** The City finds that the proposed Text Amendment 14-01 is exempt from CEQA review because there is no possibility that this text amendment to the zoning regulations, which does not directly authorize any new construction or development, may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. Text Amendment TA 14-01 does not authorize any new construction or development; it clarifies and better-articulates the already-existing standards for how the City reviews proposals to construct or modify wireless communications facilities. Each proposed wireless communication facility governed under the proposed ordinance will receive individualized CEQA review unless exempt under CEQA or preempted under federal law. Accordingly, the City finds that Text Amendment TA 14-01 is exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that that it will have a significant effect on the environment.

(b) **CEQA Guidelines Section 15378(b)(5).** The City finds that the regulations related to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 do not qualify as a “project” under CEQA Guidelines Section 15378(b)(5) because they merely create an administrative internal process to determine whether federal law mandates that the City “shall approve, and may not deny” a wireless permit application. Section 6409(a) requires that State and local governments “may not deny, and shall approve” any “eligible facilities request” for collocation or modification of wireless transmission equipment so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.” Under CEQA Guidelines Section 15378(b)(5), a “project” does not include “administrative activities of governments that will not result in direct or indirect physical changes in the environment.”

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

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

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

that do not directly or indirectly result in any physical changes in the environment.

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

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

## Chapter 14

### Wireless Communication Facilities

**Sections:**

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

**Sec. 10-14.010      Purpose.**

- (a) The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Ojai community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under state and federal law.
- (b) This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the City, its residents, businesses, and community at large.
- (c) The regulations in this City are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services,

(2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

(d) This chapter shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

**Sec. 10-14.020                    Definitions.**

(a) **“base station”** means the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network. A “non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

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

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

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

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

(f) **“wireless”** means any Commission-authorized wireless communications service.

(g) **“wireless communication facility”** or **“wireless facility”** or **“facility”** means any facility that transmits and/or receives electromagnetic waves, including, but not limited to commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures

supporting said equipment, equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas and other accessory development. The term also means any facility or transmission equipment used to provide any Commission-authorized wireless communications service including but not limited to personal wireless services defined by the Telecommunications Act of 1996 and licensed by the Federal Communications Commission, including but not limited to, the types commonly known as cellular, personal communications services ("PCS"), specialized mobile radio ("SMR"), enhanced specialized mobile radio ("ESMR"), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems ("DAS") and similar systems.

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

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

- (a) *New facilities.* All permit applications received after the effective date of this chapter must comply with this chapter.
- (b) *Changes to existing facilities.* All permit applications to in any manner whatsoever modify a previously approved facilities received after the effective date of this chapter must comply with this chapter.
- (c) *Exemptions.* This section shall not apply to:
  - (1) The City of Ojai.
  - (2) *Amateur Radios.* This section shall not govern any amateur radio facility that is under seventy (70) feet in height and is owned and operated by a Federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
  - (3) *Over the air receiving devices.* This section shall not govern any over-the-air-receiving-devices, as defined by the FCC at 47 C.F.R. § 1.4000, with a maximum diameter of one (1) meter (thirty-nine (39) inches) for residential installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the Federal Communications Commission and the California Public Utilities Commission regulations.

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

- (a) *Permits.* All new facilities and collocations or modifications to existing facilities shall require a permit in accordance with this chapter.
  - (1) *Conditional use permit.* All new facilities, and collocations or modifications to existing facilities that do not meet the findings of approval for a design review permit in Section \_\_.060, shall be subject to the approval of a conditional use permit in compliance with Article 24 of Chapter 2.
  - (2) *Design review permit.* All collocations or modifications to existing facilities that meet the findings of approval for a design review permit in Section \_\_.060 shall be subject to a design review permit in compliance with Article 20 of Chapter 2.
  - (3) *Other required permits and approvals.* In addition to any conditional use permit or design review permit required under this section, an applicant must also apply for and obtain any separate permit or approval required for such telecommunication facility under the City's municipal code, including but not limited to building, electrical, and encroachment.
- (b) *Permit submittal.* All permit applications shall be submitted by the applicant, in-person, at a prior-scheduled appointment with City staff from the all departments that require a permit or other approval for the proposed project. The applicant should be prepared to discuss the proposed change and answer questions from staff members to help facilitate the expedited review by all appropriate departments. No permit application may be submitted in any other manner, and the acceptance of a permit application or any partial permit application shall not constitute a waiver of the requirements under this section. Applicants may submit supplemental information to a submitted permit application without an appointment. The Director may waive the required appointment in a signed writing.
- (c) *Incomplete application notices.* In the event that City staff determines that a permit application does not contain all the required materials, City staff may issue an incomplete notice consistent with this subsection:
  - (1) City staff may toll the time for review only when it issues an incomplete notice within the first thirty (30) days after a permit application is submitted, and only when the incomplete notice specifies the incomplete or missing information and the publically available information source that requires that missing or incomplete information. City staff may issue an incomplete notice after the first thirty (30) days, but it will not toll the time for review.
  - (2) After an applicant responds to an incomplete notice, City staff may toll the time for review when it issues a subsequent incomplete notice within ten (10) days after the applicant's response (even when the first thirty (30) day period has

elapsed); provided, however, that the subsequent incomplete notice cannot toll the time for review based on an issue not cited in the first incomplete notices.

**Sec. 10-14.050**

**Regulations for facilities subject to a conditional use permit.**

- (a) Conditional use permit application materials. Unless the Director waives the requirement in a signed writing, all design review permit applications must include the materials as follows:
  - (1) *Application fee.* An application fee as the City may establish from time-to-time to reimburse the City for its costs to review the permit application.
  - (2) *Independent consultant deposit.* An independent consultant deposit, if required, as the Director may establish from time-to-time to reimburse the City for its costs to retain an independent consultant review the design review permit application.
  - (3) *Site plans.* Complete and accurate construction-quality plans drawn to scale, including (1) plan views and all four elevations before and after the proposed construction with all height and width measurements called out; (2) a depiction of all proposed transmission equipment; (3) a depiction of all proposed utility runs and points of contact.
  - (4) *Visual analysis.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
  - (5) *Statement of Purpose.* A clear and complete written Statement of Purpose shall minimally include: (1) a description of the technical objective to be achieved; (2) an annotated topographical map that identifies the targeted service area to be benefitted; (3) the estimated number of users in the targeted service area; and (4) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.
  - (6) *Design justification.* A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete Design Justification must identify all applicable design standards under this chapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

(7) *Alternative sites analysis.* A clear and complete written alternative sites analysis that shows at least five (5) technically feasible and potentially available alternative sites considered, together with a factually detailed and meaningful comparative analysis between the alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate. A complete alternative sites analysis may include less than five (5) alternative sites so long as the applicant provides a factually detailed written rational for why it could not identify at least five (5) technically feasible and potentially available alternative sites.

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

(9) *Structural analysis.* A structural analysis, prepared by a qualified independent engineer, that assesses whether the proposed wireless communication facility demonstrates planned compliance with all applicable building codes.

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

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

(12) *Other published materials.* All other information and/or materials that the City may, from time-to-time, make publically available.

(b) Guidelines and standards in general.

(1) *Location guidelines.*

- (A) *Collocation preference.* Applicants shall collocate with existing facilities to the extent feasible.
- (B) *Preferred locations.* To minimize aesthetic and visual impacts and to the maximum extent feasible, all new telecommunication facilities shall be located according to the following preferences, ordered from most-preferred to least-preferred:
  - (i) parcels owned or controlled by the City;
  - (ii) parcels owned or controlled by other governmental entities;
  - (iii) parcels principally used as a golf course;
  - (iv) parcels or rights of way in agricultural zones;
  - (v) parcels or rights-of-way in industrial zones;
  - (vi) parcels or rights-of-way in commercial zones;
  - (vii) parcels or rights-of-way in open space zones; and
  - (viii) parcels or rights-of-way in residential zones.
- (C) *Exception for facilities proposed based on proximity to residential uses.* Notwithstanding the preferences listed in Section \_\_.050(b)(i)(B), a proposed facility in a less preferred location shall always be more preferred over a facility within one hundred (100) feet from a residential use measured from the nearest point of the proposed facility to the property line of the parcel with the residential use.
- (D) *Most strongly disfavored locations.* No facility shall be permitted or constructed in a location where it would:
  - (i) extend above a ridgeline;
  - (ii) impact a scenic viewshed;
  - (iii) impact a protected tree; or
  - (iv) impact a landmark property.

(2) *Stealth and concealment techniques.* All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and/or structures. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened with concrete walls or wooden fences not less than six (6) feet above ground. No barbed wire, razor wire, or other such similar fences shall be permitted; chain link fences may be permitted only when completely concealed from public view. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.

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

(4) *Height.* All new facilities and substantial changes to existing facilities shall comply with the applicable zone height limit.

(5) *Setbacks.* All new facilities and substantial changes to existing facilities shall comply with all applicable setback requirements.

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

(7) *Noise.* At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in Title 5, Chapter 11 of this Code.

(8) *Signage.* No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.

(9) *Code compliance.* All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.

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

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

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

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

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

- (1) *Preferred locations.* Facilities shall be located as far from residential uses as feasible, and on arterial and collector streets to the extent feasible. Facilities in the rights-of-way shall maintain at least a five hundred (500) foot setback from other facilities, except when collocated or on opposite sides of the same street.
- (2) *Undergrounded equipment.* All non-antenna equipment shall be installed underground to the extent feasible. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to extent feasible.

(3) *Pole-mounted or tower-mounted equipment.* All pole-mounted and tower-mounted transmission equipment shall be mounted as close as possible to the tower so as to reduce the overall visual profile to the extent feasible. All pole-mounted and tower-mounted transmission equipment shall be painted with flat, non-reflective colors that blend with the visual environment. No portion of the antenna or transmission equipment mounted on a pole may be less than sixteen (16) feet above any road surface.

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

- (1) Height of the proposed facility;
- (2) Proximity of the facility to residential structures and residential district boundaries;
- (3) Nature of uses on adjacent and nearby properties;
- (4) Surrounding topography;
- (5) Surrounding tree coverage and foliage;
- (6) Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (7) Proposed ingress and egress; and
- (8) Availability of existing facilities for collocation and/or other existing structures.

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

(a) *Purpose and intent.*

(1) Under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, State and local governments “may not deny, and shall approve” any “eligible facilities request” so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.” *See* 47 U.S.C. § 1455(a) (2013). A permit application subject to Section 6409(a) is referred to as a “covered request.”

(2) On December 17, 2014, the Federal Communications Commission adopted a report and order that interpreted Section 6409(a) to limit local discretion over wireless permit applications that qualified under the statute as a covered request. Among other things, the Commission specifically limited the kinds of information localities could solicit in permit applications, defined “substantially change the physical dimensions” to include objective thresholds under a cumulative limit, and enacted a rule that “deemed-granted” any covered request when the local reviewing authority fails to act within sixty (60) days after the application is submitted. The Commission codified its rules to interpret Section 6409(a) at 47 C.F.R. §§ 1.40001 *et seq.*

(3) The purpose of this subsection is to promote and protect the public health, safety and welfare. This ordinance does so by setting forth standards and processes taken from Section 6409(a) and the Commission’s rules for the submittal, review, and action upon a permit application.

(4) This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, and the applicable Federal Communication Commission and court decisions and determinations relating to same.

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

(c) *Design review permit application materials.* Unless the Director waives the requirement in a signed writing, all design review permit applications must include the materials as follows:

(1) *Application fee.* An application fee as the City may establish from time-to-time to reimburse the City for its costs to review the permit application.

(2) *Independent consultant deposit.* An independent consultant deposit, if required, as the Director may establish from time-to-time to reimburse the City for its costs to retain an independent consultant review the design review permit application.

(3) *Site plans.* Complete and accurate construction-quality plans drawn to scale, including (1) plan views and all four elevations before and after the proposed change with all height and width measurements called out; (2) a depiction of all existing and proposed transmission equipment; (3) a depiction of all existing and proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights-of-way and/or easements for access and utilities in

plan view. For wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012. For base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as originally constructed.

- (4) *Visual analysis.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (5) *Narrative.* A written narrative that explains in explicit factual detail why the applicant believes that Section 6409(a) governs the proposed change permit request. The narrative should identify each required finding of approval under the applicable section of this chapter for the proposed change and explain what facts allow the Director to affirmatively make each finding.
- (6) *Prior permits.* True and correct copies of all previously issued permits, together with all conditions of approval, together with a written statement from the applicant that certifies the proposal will not violate any applicable permit or condition of approval.
- (7) *Radio frequency emissions compliance report.* A written report, prepared by a qualified engineer, that assesses whether the proposed wireless communication facility demonstrates planned compliance with all maximum permissible exposure limits established by the Federal Communications Commission. The report shall also include a cumulative analysis that accounts for all emissions from all wireless communications facilities located on or adjacent to the proposed site, identifies the total exposure from all facilities, and demonstrates planned compliance with all maximum permissible exposure limits established by the Federal Communications Commission. The report shall include a detailed description of all mitigation measures required under the Federal Communications Commission.
- (8) *Structural analysis.* A structural analysis, prepared by a qualified independent engineer, that assesses whether the proposed wireless communication facility demonstrates planned compliance with all applicable building codes.
- (9) *Noise study.* A noise study, prepared and sealed by a qualified engineer, for the proposed wireless communications facility and all associated equipment, which shall include without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The noise study shall include without limitation the manufacturers' specifications

for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

(10) *Other permits and approvals.* A design review permit application must include all permit applications with all required application materials for each and every separate permit or approval required for such telecommunication facility under the City's municipal code, including but not limited to building, electrical, and encroachment.

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

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

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

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

- (1) the applicant proposes a change on a structure (whether built to support Commission-licensed or authorized antennas and their associated facilities or not)

that currently supports existing wireless transmission equipment and all necessary permits for such use are in good standing;

- (2) the proposed change does not increase the height more than ten percent (10%) or 10 feet (whichever is greater) above the originally approved structure height;
- (3) the proposed change does not increase the width more than six feet relative to the originally approved structure width;
- (4) the proposed change does not involve more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
- (5) the proposed change does not involve excavation outside the lease or license area;
- (6) the proposed change does not defeat any existing concealment elements; and
- (7) the proposed change does not appear to violate a prior conditions of approval based on the applicant's representations.

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

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

(7) the proposed change does not appear to violate a prior conditions of approval based on the applicant's representations.

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

- (1) *No automatic renewal.* Grant or acceptance of this permit shall not renew or extend the underlying permit term.
- (2) *As-builts.* The applicant shall submit to the Director an as-built survey that details the entire post-change support structure, all transmission equipment, and all utilities within ninety (90) days after completed construction.
- (3) *Indemnification.* To the maximum extent permitted by applicable law, the applicant shall at all times defend, indemnify, protect, save harmless, and exempt the City, its officers, commissioners, directors, attorneys, agents, servants, employees, and volunteers from any and all penalties, damages, or charges, excepting only punitive damages, which arise from claims, suits, demands, causes of action, and/or awards, and/or costs and expenses in connection therewith, whether compensatory or consequential, whether legal or equitable, which arise from, or are caused by, the construction, erection, installation, location, collocation, operation, maintenance, repair, modification, replacement, removal, relocation, or restoration of wireless transmission equipment within the City based on any act or omission of an applicant, its directors, officers, attorneys, site managers, agents, employees, contractors, subcontractors, independent contractors, or representatives. Without limiting the generality of the foregoing, the penalties, damages, or charges referenced in this condition of approval, shall include all reasonable attorneys' fees, consultants' fees, and expert witness' fees as costs and expenses recoverable by the City.
- (4) *Compliance with applicable laws.* The applicant shall comply with all applicable provisions in this chapter, any permit issued under this chapter, and all other applicable laws and regulations. Any failure by the City to enforce compliance shall not may be relieve any applicant of its obligations under this chapter, any permit issued under this chapter, or all other applicable laws and regulations.
- (5) *Violations.* The City may revoke a design review permit granted under this chapter for any violation of the City of Ojai Municipal Code. The remedies available to the City shall be cumulative and the City may resort to any other

remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

- (6) *No waiver of standing.* The City's grant of any design review permit pursuant to 47 U.S.C. § 1455(a) shall not waive, nor be deemed to waive, the City's right and/or standing to challenge the validity of 47 U.S.C. § 1455(a) or any related administrative or judicial order or decision, either on its face or as applied in any particular case.
- (h) *Design review permit denial without prejudice.*
  - (1) *Grounds for a denial without prejudice.* The Director may issue a denial without prejudice for an design review permit when:
    - (A) based on the materials submitted by the applicant, the Director cannot make all findings required for the type of proposed change;
    - (B) the proposed change would cause a violation of an objective, generally applicable law related to health and safety;
    - (C) the proposed change involves the replacement of the entire support structure; or
    - (D) the proposed change does not qualify for mandatory approval under 47 U.S.C. § 1455(a), as may be amended or superseded, and as may be interpreted by any order or decision by the Federal Communications Commission or by any court of competent jurisdiction.
  - (2) *Procedures for design review permit denial without prejudice.* All design review permit application denials shall be in written form; the written permit denial shall include (i) the decision date; (ii) a statement that the City denies the permit; (iii) a short and plain statement with the basis for the denial.
  - (3) *Submittal after design review permit denial without prejudice.* After the Director denies an design review permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be immediately allowed to either:
    - (A) submit a new design review permit application for the same or substantially the same proposed change; or
    - (B) submit a new conditional use permit application for the same or substantially the same proposed change.

(4) *Costs to review a denied design review permit.* The City shall be entitled to recover the reasonable costs for its review of any design review permit application. In the event that the Director denies a design review permit application, the City shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a conditional use permit application or submit a design review permit application for the same or substantially the same change unless all costs for the prior-denied permit application are paid in full.

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

(a) *Selection by Director.* The Director, in her or his absolute discretion, may select and retain an independent consultant with expertise in telecommunications satisfactory to the Director in connection with any permit review and evaluation.

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

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

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

**Sec. 10-14.080 Maintenance.**

(a) All wireless communication facilities must comply with all standards and regulations of the Federal Communications Commission, and any other state or federal government agency with the authority to regulate wireless communication facilities.

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

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

- (a) Any facility whose permit has expired or whose permit has been terminated by the City or that is not operated for a continuous period of one hundred eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the Director notifying the owner of the abandonment.
- (b) If the facility is not removed within the ninety (90) day period, the Director may remove the facility at the owner's expense.
- (c) If there are two (2) or more users of a single wireless tower, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the wireless tower.
- (d) All applicants for facilities shall post a Two Thousand and no/100 Dollars (\$2,000.00) cash bond with the City to ensure that all costs incurred by the City in removing the antenna or tower shall be provided for.

**Sec. 10-14.100                    Ownership transfers.**

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer and the identity of the transferee. The Director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and

analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the City, Federal Communications Commission, and California Public Utilities Commission.

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

- (a) Each permit issued, except permitted uses pursuant to this chapter, shall be issued for a period of ten years, but may be reduced for public safety reasons or substantial land use reasons pursuant to California Government Code Section 65964(b). The City may establish a build-out period for a wireless telecommunication facility. At the end of the specified permit term, the permit shall automatically expire unless a written request for renewal is submitted by the applicant, prior to expiration, to the director of community development. Upon the expiration of any required permits for the facility, it shall be removed in accordance with the requirement of Section \_\_.090 of this chapter.
- (b) If a request for renewal of the required permit(s) is received, the permit shall remain in effect until a decision on the renewal is made. The renewal request shall be reviewed in a similar manner as the original approval. The review is to insure that the facility is still in operation, that it has been properly maintained, that the original conditions of approval have been adhered to and whether they are to remain the same or need to be modified, and to determine if new means exist to upgrade the facility to better meet the purpose, intent, goals and provisions of this chapter. If new means exist that will allow the redesign or relocation of the facility to better meet the purpose, intent, goals and provisions of this chapter, then the facility must be redesigned and/or relocated accordingly. Failure to comply with this requirement may be considered grounds for denial of a new permit.
- (c) The City may add conditions to any new permits as necessary to advance a governmental interest related to health, safety, or welfare, provided, however, that any condition shall comply with applicable Federal Communications Commission and California Public Utilities Commission regulations and standards, and that reasonable advance notice thereof has been provided to all affected parties. If an entitlement is not renewed, the City shall give the applicant written notice thereof together with the rationale on which the City's decision was made. Any applicant that is dissatisfied with a decision to renew or not to renew their permit may appeal the decision in accordance with the provisions of the section(s) under which the original approval was issued.

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

Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial would prohibit or have the effect of prohibiting the provision of wireless telecommunications services by the applicant. As such, the City may grant special permission or exception, on such terms as the City may deem appropriate,

in cases where the City determines that the grant of the special permission is necessary to comply with state and federal law or regulations and where the applicant shows by clear and convincing evidence that no other location or combination of locations in compliance with this chapter can provide comparable communications. Prior to the issuance of an exception, the applicant shall be required to submit to the director of community development a written explanation setting forth clear and convincing evidence that the location or locations, and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close a significant gap or to reduce it to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than significant in service. Exceptions shall be subject to the review and approval of the planning commission and City council. The burden is on the applicant to prove significant gaps and least intrusive means as required herein.

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

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

**Sec. 10-14.140      Severability.**

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

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

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

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

CITY OF OJAI, CALIFORNIA

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

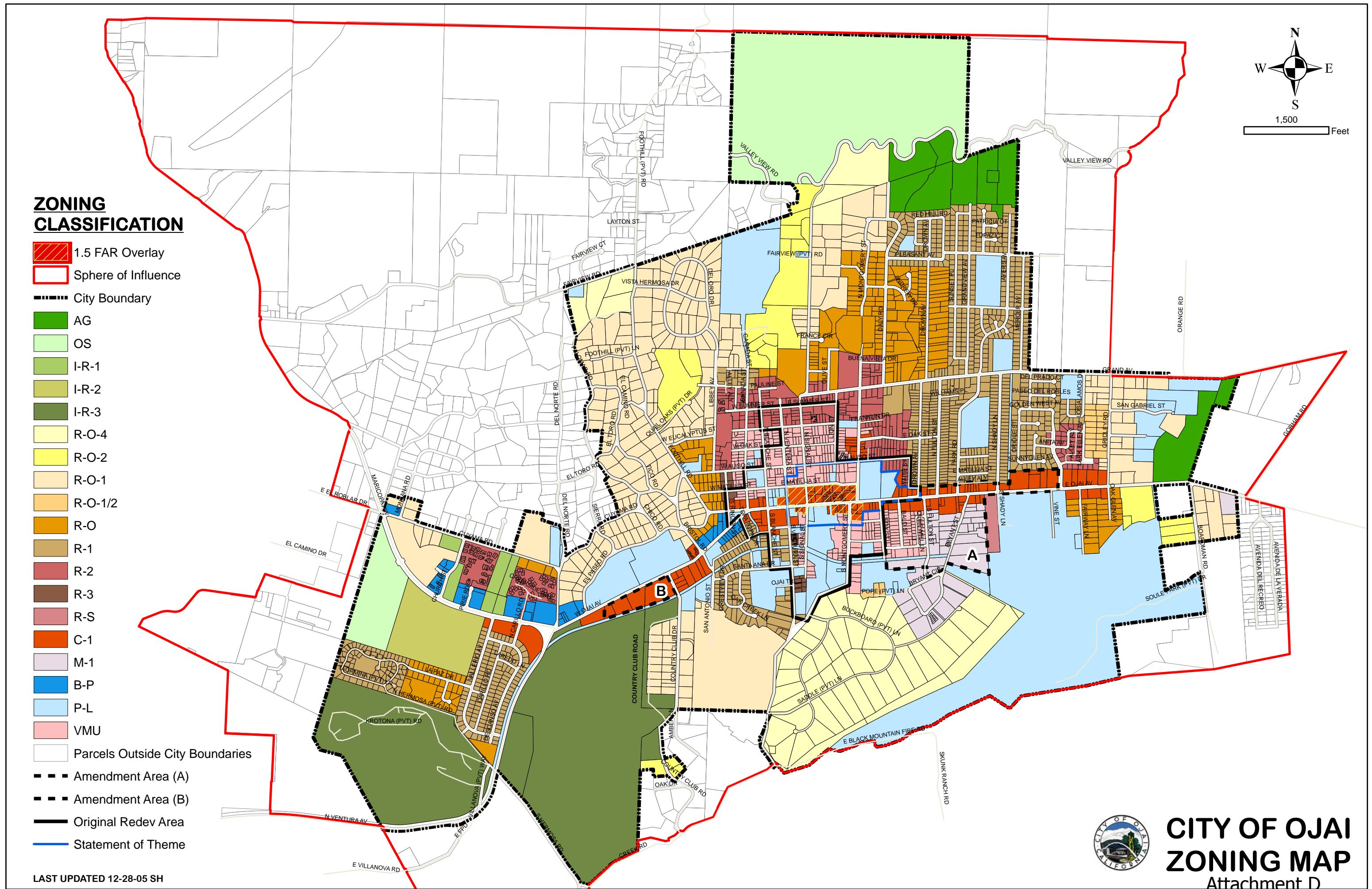
ATTEST:

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

APPROVED AS TO FORM:

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

STATE OF CALIFORNIA )



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Title 5 SANITATION AND HEALTH

**Chapter 11 NOISE STANDARDS AND REGULATIONS****Sec. 5-11.01. Purpose.**

The purpose of this chapter is to maintain a quiet and comfortable living environment and to protect residents from unhealthful levels of noise through the control of unnecessary, annoying and excessive sound.  
(§ 1, Ord. 731, eff. August 27, 1998)

**Sec. 5-11.02. Definitions.**

“Ambient noise” is the normal or existing level of environmental noise at a given location. It is the composite of all noise from sources near and far, excluding the alleged intrusive noise source.

“A-weighted sound level” means the sound level as measured on a sound level meter using the “A” weighting network. The level so read is designated in units of db(A).

“Decibel (db)” is a unit for measuring the amplitude of a sound, equal to twenty (20) times the logarithm to the base of ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) microPascals.

“Impulsive noise” means a noise characterized by brief excursions of sound pressures whose peak levels are very much greater than the ambient noise level (such as might be produced by the impact of a pile driver) typically with one second or less duration.

“Leaf blower” is any mechanical device used, designed or operated to produce a current of air by fuel, electricity or other means to push, propel, or blow cuttings, refuse or debris.

“Noise level limit” means the maximum noise level acceptable under this article for the stated period of time.

“Sound amplifying equipment” means any machine or device used for amplification of the human voice, music or other sound regardless of location, including such things as radios, stereos and compact disc players.

“Sound level meter” means an instrument used to measure sound levels which meets the standards of the American National Standards Institute.

(§ 1, Ord. 731, eff. August 27, 1998)

**Sec. 5-11.03. General noise regulations.**

- (a) It is unlawful for any person to make or permit to be made any noise which disturbs the peace and quiet of any neighborhood or which causes physical discomfort to any reasonable person of normal sensitivity in the area. Except as otherwise provided herein, no permit may be issued for any activity that may violate this section.
- (b) The factors which may be considered in determining whether a violation exists include, but are not limited to, the following:
  - (1) The sound level of the objectionable noise;
  - (2) The sound level of the ambient noise;

Attachment E

Page 1 of 8

1/30/2015

- (3) The proximity of the noise to residential sleeping facilities;
- (4) The nature and zoning of the area within which the noise emanates;
- (5) The number of persons affected by the noise sources;
- (6) The time of day or night the noise occurs;
- (7) The duration of the noise and its tonal, informational or musical content;
- (8) Whether the noise is continuous, recurrent or intermittent;
- (9) Whether the noise is produced by a commercial or non-commercial activity.

(§ 1, Ord. 731, eff. August 27, 1998)

**Sec. 5-11.04. Noise standards and limits.**

(a) Exterior noise standards.

- (1) The following exterior noise standards apply to residential and commercial/industrial zones within the City:

	<b>Time Period</b>	<b>Noise Level</b>
Residential Zone (includes Village Mixed Use)	7:00 a.m. to 10:00 p.m.	55 db
	10:00 p.m. to 7:00 a.m.	45 db
Commercial/ Industrial Zone	7:00 a.m. to 10:00 p.m.	65 db
	10:00 p.m. to 7:00 a.m.	55 db

- (2) It is unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise, on property owned, leased, occupied or otherwise controlled by such person, when the foregoing causes the noise level, when measured on any other residential or commercial/industrial property, to exceed the following noise levels measured in decibels on a cumulative basis per hour:

Zones	<b>Noise Standard</b>		<b>15 Minutes Duration/Hour</b>		<b>Five Minutes Duration/Hour</b>		<b>One Minute Duration/Hour</b>	
	Day	Night	Day	Night	Day	Night	Day	Night
Residential (includes Village Mixed Use)	55 db	45 db	60 db	50 db	65 db	55 db	70 db	60 db
Commercial/Industrial	65 db	55 db	70 db	60 db	75 db	65 db	80 db	70 db

(b) Interior noise standards.

- (1) The following interior noise standards apply to all residentially zoned parcels and dwelling units within the City:

<b>Zone</b>	<b>Time Period</b>	<b>Interior Noise Standard</b>
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Attachment E

Page 2 of 8

1/30/2015

Residential	All hours	45 db
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(2) It is unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise, on property owned, leased, occupied or otherwise controlled by such person when the foregoing causes the noise level, when measured within any other dwelling unit on any residential property, to exceed:

- (i) The interior standard for a cumulative period of more than five minutes in any hour;
- (ii) The interior noise standard plus five decibels for a cumulative period of more than one minute in any hour;
- (iii) The interior noise standard plus ten decibels for any period of time.

(c) Ambient noise level exception. In the event the existing ambient noise level exceeds any of the noise level limits in subsections A and B of this section, the noise level limit shall be increased in five (5) decibel increments as appropriate to encompass or reflect the ambient noise level.

(§ 1, Ord. 731, eff. August 27, 1998)

#### **Sec. 5-11.05. Special noise sources.**

Special regulations and/or prohibitions are established on the following specific noise sources; provided, however, that unless otherwise excepted, the following noise sources must nevertheless comply with the noise level limits set forth in Section 5-11.04 of this chapter.

- (a) Animals. It is unlawful to keep, maintain or permit to be kept or maintained upon any premises, animals which make utterances, barks or cries which are so loud, so frequent and continued over so long a period of time that they deprive persons residing in two (2) or more separate residences in the neighborhood of the comfortable enjoyment of their home.
- (b) Car alarms, burglar alarms, horns and signaling devices. Unnecessary use or operation of car alarms, burglar alarms, horns and signaling devices, on automobiles, motorcycles or any other vehicles is prohibited. It is unlawful for any person to cause, allow or permit any motor vehicle alarm registered in the name of, or driven by, such person to emit any audible sound within the City for a period of more than ten (10) minutes. It shall also be unlawful for any property owner or lessee/tenant of a real property to allow a burglar alarm to sound for more than ten (10) minutes. The time shall be calculated based upon the emission of the first audible sound, and ten (10) minutes thereafter, notwithstanding any variation or delay in the emissions of audible sound. Any violation of this section is declared a public nuisance. In addition to other remedies, if a motor vehicle alarm continues to be activated, any police officer may have the vehicle removed from any zone in the City to abate such nuisance at the owner's and/or responsible party's expense. In the case of burglar alarms, the owner or lessee/tenant of the property shall be subject to a citation if the alarm sounds for more than ten (10) minutes.
- (c) Construction. Any person who operates powered construction equipment, erects, constructs, demolishes, excavates for, alters or repairs any building or structure within the City in such a manner as to cause noise to be received by any person beyond the boundaries of the property on which the construction work is occurring shall comply with the following:
  - (1) Construction hours shall be limited to between 7:00 a.m. and 5:00 p.m. on weekdays. Construction activities authorized by a valid City permit may, as warranted by the project, exceed the noise level limits of Section 5-11.04 on a temporary and short-term basis during the authorized construction hours, as determined appropriate and necessary by the Community Development Director.

- (2) No construction work shall be performed on weekends or City holidays.
- (3) All construction equipment shall be operated with the standard factory silencer and/or muffler equipment attached and maintained in good working order.

Exception: A person may perform construction work on the person's own property that results in noise being received by persons beyond the boundaries of the property between 8:00 a.m. and 6:00 p.m. on weekends providing such construction activity is for the purpose of improving the property where the work is being performed, is not carried on for profit or livelihood, and otherwise meets the noise level standards of Section 5-11.04 of this chapter.

(d) Gardening and domestic power tools. No person shall operate any lawnmower, lawn edger, riding tractor or any other machinery, equipment or other mechanical or electrical device, or any hand tool which creates a loud, raucous or impulsive sound, within any residential zone or within any commercial zone which can be heard within any residential zone between the hours of 6:00 p.m. and 8:00 a.m. Use of such tools is prohibited on City holidays.

(e) Leaf blowers.

(1) Residential zones, including village mixed use. No person shall operate a gas-powered leaf blower within any residential areas of the City after December 31, 1998; provided, however, that gas-powered leaf blowers may be operated within the confines of a condominium or planned development project with a minimum project size of at least seven and one-half (7 ½) acres until October 1, 1999 providing the following conditions are met:

- (i) The operator shall be a minimum distance of 150 feet from the nearest residence, school, hospital or residential care facility to the project.
- (ii) Hours of operation are limited to no more than three (3) days per week (Monday-Friday) during a five (5)- hour period between the hours of 9:00 a.m. and 4:00 p.m. The project's homeowners' association shall designate the days and time periods when gas-powered leaf blowers may be used subject to the above limitations. Notice of the days and times designated shall be provided in writing to all members of the association and/or residents of the development. Additionally, this information shall be posted at any location customarily used by the association for informational postings or at another location easily observable to residents. Operation is prohibited on Saturdays, Sundays and holidays.
- (iii) No cutting, refuse or debris is blown onto neighboring properties or into a street or gutter.
- (iv) The standard factory silencer and/or muffler equipment shall be attached at all times and maintained in good working order.

After October 1, 1999, the operation of gas-powered leaf blowers shall be prohibited in all residential zones.

The operation of electric leaf blowers is permitted in residential zones providing the following conditions are met:

- (v) Hours of operation are limited to 8:00 a.m. to 5:00 p.m. weekdays and Saturdays. Operation is prohibited on Sundays and holidays.
- (vi) No cutting, refuse or debris is blown onto neighboring properties or into a street or gutter.
- (vii) The standard factory silencer and/or muffler equipment shall be attached at all times and in good working order.

(2) All other zones. The operation of gas-powered and electrical leaf blowers shall be permitted on parcels in non-residential zones under the following conditions:

- (i) If using a gas-powered leaf blower, the operator shall be a minimum distance of 150 feet from the nearest neighboring residence, school, hospital, lodging or residential care facility.
- (ii) Hours of operation are limited to 8:00 a.m. to 6:00 p.m. Operation is prohibited on City holidays.
- (iii) No cuttings, refuse or debris are blown onto neighboring properties or into a street or gutter.
- (iv) The standard factory silencer and/or muffler equipment shall be attached at all times and maintained in good working order.

(f) Libbey Bowl events.

- (1) All performances using sound amplification equipment in Libbey Bowl shall be in conformance with the adopted sound control plan for the Bowl. The sound control plan shall include such provisions as determined by resolution of the City Council.
- (2) Use of sound amplification equipment in Libbey Bowl shall be limited to the hours between 10:00 a.m. and 10:00 p.m.

(g) Loading and unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials or similar objects between the hours of 10:00 p.m. and 7:00 a.m. in a manner that causes a noise disturbance across the boundary lines of an adjacent property shall be prohibited. At all other times such loading and handling activities are subject to the noise level limits of Section 5-11.04 of this chapter.

(h) Motor vehicle operation. The racing of the engine of a motor vehicle, allowing the engine to idle for longer than ten (10) minutes, or bringing a motor vehicle to a sudden start or stop are prohibited, except as required by an emergency. Operating a vehicle on public or private property in a manner that generates noise that is so loud, raucous or jarring that it disturbs or is a nuisance to any adjacent neighborhood or person residing in the neighborhood is prohibited.

(i) Outdoor dining. Outdoor dining in commercial zones is prohibited between the hours of 11:30 p.m. and 6:00 a.m. Such hours of operation may be further restricted by the conditions of any permit that must be granted to approve outdoor dining.

(j) Pool equipment. All pool motor pumps and filters shall be designed and constructed with sound attenuation devices that meet the requirements of the City Building Department.

(k) Refuse collection. No person shall collect refuse or operate a street sweeping vehicle on a street or parking lot within or adjacent to a City residential area between the hours of 6:00 p.m. and 7:00 a.m.

(l) Sound amplifying equipment (includes radios). The use or operation of sound amplifying equipment shall be subject to the following restrictions and prohibitions:

- (1) The type of amplified sound shall be limited to either music or human speech, or both.
- (2) The use or operation of sound amplifying equipment shall comply with the noise level limits set forth in Section 5-11.4.
- (3) The volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to persons or domestic animals within the area of audibility.
- (4) It is unlawful for any person to operate a radio, stereo, compact disc player or other sound amplifying equipment on the public right-of-way or public land in a manner that exceeds the noise level limits established for adjacent properties or is audible to the human ear at a distance of thirty-five (35) feet from the source, unless the operation of such equipment is part of a special event

sponsored by the City or is otherwise permitted pursuant to the provisions of subsection (f) of this section.

(5) The operation of any radio, compact disc or tape player on a public transit bus or trolley so as to emit noise that is audible to any other person in the vehicle shall be prohibited.

(m) Street sweeping vehicles. No person shall collect refuse or operate a street sweeping vehicle on a street or parking lot within or adjacent to a City residential area between the hours of 6:00 p.m. and 5:00 a.m.

(n) Yelling, shouting, etc. Disturbing or raucous yelling, shouting, hooting or whistling on the public streets and sidewalks is prohibited.

(§ 1, Ord. 731, eff. August 27, 1998, as amended by § 1, Ord. 736, eff. April 22, 1999)

#### **Sec. 5-11.06. Loud parties and assemblages—Enforcement costs and response fees.**

(a) When any loud or unruly assemblages occur and the City's law enforcement agency is required to respond to the scene in response to citizen complaints, the peace officer at the scene shall determine whether there is a violation of this chapter. If the peace officer determines there is a violation, he or she shall notify the owner of the property and/or the person in charge of the property and/or the person responsible for the assemblage that such person or persons shall be held personally liable for the cost of providing additional law enforcement personnel over and above the normal police services provided during the initial response to the assemblage. If the person in charge or responsible for the party is a minor, the parents or guardians of such minor shall be notified regarding this liability.

(b) In the event that subsequent police personnel and resources are needed within twenty-four (24) hours after the initial warning given in accordance with subsection (a) of this section in order to control the threat to the public peace, health, safety or general welfare caused by such unruly assemblage, such resources shall be deemed to be on a special security assignment over and above normal police services. The owner of the property and/or the person in charge of the property where such assemblage occurs and/or the person responsible for such assemblage shall be personally responsible for the cost of subsequent call backs or security assignments in an amount determined upon a cost accounting basis by the City, per administrative guidelines adopted by the City and approved by resolution of the City Council. The cost of such special police security shall include damage to City property and/or injuries to City personnel. In addition, to the foregoing, the City reserves its right to elect any other legal remedies.

(§ 1, Ord. 731, eff. August 27, 1998)

#### **Sec. 5-11.07. Exemptions.**

The following activities shall be exempt from the provisions of this chapter:

(a) Emergency exemption. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work, including emergency road work or utility repair;

(b) Warning devices. The operation and/or testing of warning devices necessary for the protection of public safety, including police, fire and ambulance sirens and train horns;

(c) Outdoor school activities. Activities conducted on public playgrounds and public or private school grounds, including, but not limited to, athletic and school entertainment events;

- (d) Special events. Community events, concerts and parades open to the general public without charge which are approved and/or permitted by the City in advance shall be exempt from the provisions of this chapter;
- (e) Post Office tower bell. Sound emanating from the bell in the historic Post Office Tower on Ojai Avenue is exempt from the provisions of this chapter;
- (f) Public facility maintenance and construction in the public right-of-way. Maintenance and repair of public facilities by City personnel and City-authorized contractors on weekends and holidays are exempt. Construction on public facilities or in the public right-of-way by City-authorized contractors and personnel is exempt from the provisions of this chapter. City personnel performing maintenance and construction activities shall make every effort to conform with the provisions of this chapter when feasible.
- (g) After hours construction.
  - (1) The Community Development Director or designee may issue an after-hours construction permit authorizing work and/or entrance to a work site otherwise prohibited by this chapter if the Director determines that the public interest will be served by such a permit. Situations in which the public interest may be served include, but are not limited to, construction on or near school grounds and construction that may interfere with vehicular or pedestrian traffic in heavily traveled areas.
  - (2) Applications for an after-hours construction permit shall be in writing and shall set forth how the public interest will be served by issuing the permit. An after-hours construction permit may be revoked or suspended by the Planning Director or his/her designee if it is determined that the proposed activity will detrimentally affect the public safety, health and welfare. Emergency construction activities to protect the public safety, health and welfare are exempted under subdivision (1) of this subsection.

(§ 1, Ord. 731, eff. August 27, 1998)

#### **Sec. 5-11.08. Sound level measurement.**

Any sound levels measured pursuant to the provisions of this chapter shall be "A" weighted sound levels, measured with a sound level meter using the "A" weighting and slow response, except for impulsive noise, for which the fast response shall be used. The sound level meter shall meet the standards for such devices established by the American National Standards Institute. Outdoor measurements shall be taken with the microphone located along the property line of the complainant's property or the noise source. Whenever possible, the meter shall be located three (3) to five (5) feet above ground level. If the noise complaint is related to interior noise levels, interior noise levels shall be measured within the complainant's dwelling or commercial structure. If possible, the ambient noise level shall be measured at the same locations as the offending noise source is measured.

(§ 1, Ord. 731, eff. August 27, 1998)

#### **Sec. 5-11.09. Enforcement.**

- (1) The Director of Community Development shall enforce the provisions of this section.
- (2) Any noise exceeding the noise level limits specified in Section 5-11.04 of this chapter, or any noise constituting an occurrence of any prohibited act specified in this chapter, shall be deemed to be *prima facie* evidence of a violation of the provisions of this chapter.
- (3) Except where a person is acting in good faith to comply with an abatement order issued pursuant to subsection (4) of this section, violation of any provision of this chapter shall be cause

Attachment E

Page 7 of 8

1/30/2015

for a notice of violation to be issued by the Director of Community Development or other responsible official according to procedures which the Director may prescribe. Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction.

(4) In lieu of issuing a notice of violation, the Director or other responsible enforcement official may issue a warning or an order requiring abatement, within a reasonable time period, of a sound source alleged to be in violation of this chapter. No complaint or further action shall be taken in the event that the cause of the violation has been removed, the condition abated or fully corrected within the time period specified in the warning order of abatement.

(§ 1, Ord. 731, eff. August 27, 1998)

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