

**CITY OF OAKLAND**  
**AGENDA REPORT**

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TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: September 12, 2006

2006 AUG 31 PM 5:13

**RE: A Report and Ordinance Amending Planning Code Sections 17.10.860 through 17.10.910, 17.128.010 through 17.128.130, and 17.134.020 through 17.134.030 to Revise the Citywide Telecommunications Regulations Governing the Placement, Design, and Processing of Wireless Telecommunications Facilities.**

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**SUMMARY AND BACKGROUND**

At its June 27, 2006 meeting, the City Council adopted Ordinance No. 12750 C.M.S., an urgency ordinance prohibiting the approval of zoning and building permits for wireless telecommunication facilities and directing staff to prepare amendments to the existing zoning regulations regarding the construction, modification and placement of these facilities within the City of Oakland. On July 18, 2006 the City Council adopted Ordinance No. 12762 C.M.S. to extend the period covered by the urgency ordinance to October 5, 2006 to cover the time necessary for the production and adoption of the directed amendments.

In order to meet the City Council deadline of adoption of zoning amendments by October 5, 2006, the following schedule of hearing dates was determined:

August 16, 2006	Planning Commission
September 12, 2006	CED Committee
September 19, 2006	Introduction at City Council
October 3, 2006	Adoption by City Council

In addition, four public workshops were held on the 6<sup>th</sup>, 13<sup>th</sup>, 20<sup>th</sup> and 27<sup>th</sup> of July 2006, in order to solicit public comment on the proposed changes.

The Council outlined eight policy areas they requested staff to address. The Planning Commission recommended draft changes that will address five of these eight areas and is recommending that three policy considerations not be addressed by amending the zoning regulations. Detailed analysis of proposed changes or reasons for recommending no change are addressed in the Key Issues section of the report.

At the August 16, 2006 Planning Commission meeting the Commission recommended forwarding to the City Council for action the attached text changes delineated in the attached proposed ordinance to amend the Zoning Regulations relating to Telecommunications facilities.

Item \_\_\_\_\_  
CED Committee  
September 12, 2006

## **FISCAL IMPACTS**

Under the proposed revisions a small number of cases, estimated to be less than five per year, would become Major Conditional Use Permit (CUP) cases that are currently considered Minor CUP cases. This would increase the fees collected by CEDA, estimated at less than \$10,000 annually, deposited in the Land Development Fund (2415). This staff report also includes an evaluation of the need for increased staff time if certain new provisions are adopted. If such actions are agreed upon, staff will include the budget impacts when the ordinance is considered by the City Council.

## **KEY ISSUES AND IMPACTS**

The eight areas staff was directed by the City Council to examine are discussed in the following paragraphs:

- 1. Locational Standards for increased public notice/hearings (major CUP's), e.g., 100 feet to 300 feet from residences, schools, parks.**

Currently, all telecom facilities receive Design Review. Some facilities also require a minor CUP, depending on the requirements of the zone in which they propose to locate. Only one type of facility requires a major CUP -- a monopole within 300 feet of a residential zone. Council direction was to examine this aspect of the regulations to determine if more situations should be considered major use permits. Staff recommends revising Section 17.134 which will increase the number of facilities that will require major use permits by stating facilities must receive a use permit to locate in or within 100 feet of a residential zone whose antennas are not concealed from view will require a Major CUP.

In addition, staff created a set of location preferences in Section 17.128.110. This section will require additional information from the applicant to the city if a facility is proposed for a lower preference site along with justification of why higher preference locational choices with 1000 feet could not be used. This information must be submitted in sufficient detail to allow for independent verification if so ordered by the Planning Commission or Zoning Manager.

- 2. Safety mechanisms, such as fences or anti-climbing devices, around towers and restricted public access to other facilities (e.g., anti-tamper devices around equipment boxes).**

Staff has added language to the required design review findings for each facility type to insure that all reasonable measures to prevent public access, climbing or tampering have been included in the design of the site. This language appears in Sections 17.128.050-090 inclusive.

- 3. In similar fashion to language used by the Cities of Los Gatos and Pleasanton, the following community considerations to be incorporated into the "Purpose" (or other appropriate) section(s) of the new regulations:**

- a. **the health, safety general welfare, and quality of life of Oakland residents and property owners;**
- b. **the visual character of the City as a whole;**
- c. **uniform results;**
- d. **the right to deny applications when an area is sufficiently serviced by a wireless provider.**

Staff has added language to Section 17.128.010 to address points 3a and 3b above. Staff believes point 3c is both unachievable and undesirable. What is appropriate for an industrial area is not the same for a residential area. Holding either area to the other area's standards should not be part of the ordinance revisions. Rather, design and use permit review should allow for solutions to a specific set of circumstances that are appropriate for the area in question.

Staff does not believe that point 3d is a land use issue. Staff and the Planning Commission have the right to deny a discretionary approval for a site when the required design review and/or conditional use findings can not be made. Staff believes that staff or the Planning Commission should not be the arbiters of what is sufficient coverage. This conclusion is based on two reasons: First, identifying sufficient service levels is an area outside the professional expertise of planning staff. Judgments on sufficiency would come down to deciding between competing expert opinions without staff having expertise or standards to decide which expert's opinion to rely on for making a determination. Second, the amount of a certain type of facility to build in an area is essentially a business decision, not a land use decision. In the same way staff does not attempt to regulate the number of coffee shops in a given area, the number of telecommunications facilities in a given area is not the land use question. For both types of facilities the land use questions are: "Is this the appropriate location based on the General Plan and Zoning designations?" "What should a facility at this location look like?" "How should a facility at this location operate to minimize undesirable impacts on neighboring activities and facilities?"

**4. Inclusion of language stating the regulations will be reviewed every "X" years, for analysis of the regulations in light of changing technology.**

Staff recommends not including such language. Arbitrary determinations of when regulations should be reviewed are rarely appropriate. The City Council and the Planning Commission can always direct staff to review regulations when they believe it is appropriate, whether that be 6 months, 6 years or 20 years. In addition, the public can always petition the Planning Commission or Council to initiate such a review if they believe it is appropriate. Staff recommends that officials be unrestricted in determining when it is appropriate to review any given section of the Zoning Regulations.

- 5. Recertification of sites meeting current emissions standards and inclusion of language stating that if the FCC and/or TCA deem emissions unsafe, our regulations will be reviewed within six months of any such new Federal guidelines, for necessary amendments.**

The request to mandate a time for review of regulations is similar to point 4 above. Staff recommends not including such language for the same reasons. The first part of this point is a request for having sites periodically submit RF emissions reports indicating they are still in compliance with applicable standards set by the Federal government. Staff does not have the capacity at this time to administer such a program. Over the nine years for which figures are available (1997-2005) the caseload processed by the Planning & Zoning division has tripled from 744 cases per year in 1997 to 2,137 cases in 2005. The authorized staff level for Planner I-IV positions was the same in 2005 (28.5 staff) as it was in 1997 (28 staff). This tripling of workload with no increase in staff does not allow staff to take on additional duties such as post approval monitoring of sites. Tracking sites for renewals of approvals and compelling compliance for sites not renewing approvals is beyond current capabilities. Staff recommendations to address this issue are included in Section 17.128.130. There is a clear progression of reports to show that a site meets the required Federal emissions standard before the site has its final approval for the construction.

- 6. Consideration of the Pros and Cons of the following types of city-owned property for towers and antennae, instead of placement on churches, condominium roofs, etc:**
  - a. Streets**
  - b. Parks – e.g., Restroom or Recreation Center roofs, if farther than 100 feet to 300 feet from nearest residences (the lease money could then go toward facility maintenance).**
  - c. Libraries**
  - d. Fire Stations**
  - e. Two police stations**
  - f. Museum**
  - g. Parking Garages**

Staff has included language in Section 17.128.110 incorporating the idea of locating on public or quasi-public facilities as a preferred location. Instead of trying to make overly broad determinations about the desirability of specific types of public or quasi-public facilities, staff's changes allow maximum flexibility in determining appropriateness for each specific proposed location.

Staff does not recommend adopting language to single out churches as either a preferred or non-preferred location. Churches are a non-residential use and are grouped with other non-residential uses like schools, commercial buildings or institutional buildings in terms of the proposed preference hierarchy. Federal law prevents treatment of religious facilities differently from other

similar uses. Singling out churches as either a preferred or non-preferred use would most likely violated the Federal prohibition.

Similarly, staff does not recommend adopting language that would set condominiums up as a separate category. Condominiums are a particular form of ownership structure that is incidental, for land use purposes, to the classification of the use and the zone in which the use appears. *Condominiums could be commercial, industrial or residential in use and appear in any zone.* Even condominiums in which people live full time could be classified as commercial, industrial or residential under the Oakland Planning regulations depending on the amount of live and work space contained in the units. Staff believes that physical design and compatibility of the facility are the appropriate factors in the regulation of telecom sites, not ownership structure of the facility on which they propose to locate.

- 7. Consideration of the following properties for towers and antennae, instead of placement on churches, condominium roofs, etc:**
  - a. CALTRANS (freeway right of way)**
  - b. BART Stations**
  - c. EBMUD (tank reservoirs)**

The City has no jurisdiction over these agencies and their facilities; therefore, a direct naming of such facilities as a preferred location would be inappropriate. However, all of these agency facilities would be covered as a preferred location under the broad language in Section 17.128.110 as a public or quasi-public facility.

- 8. An administrative procedure to ensure continuing compliance by the wireless provider (for example, the City of Pleasanton Municipal Code, Section 18.110.270, provides that “all approvals for personal wireless service facilities shall be valid for an initial maximum period of five years...and may be extended administratively...upon the verification of the personal wireless provider’s continued compliance with the findings and conditions of approval under which the application was original approved....”)**

Staff recommends not including such language due to:

- Staff workload
- Consistency with other Zoning and Municipal Code provisions
- Redundancy with other compliance mechanisms

*The problem with requiring a recertification program given the current staffing levels was detailed in the response to point 5. The administrative load to track sites for renewals of approvals and compelling compliance for sites not renewing approvals is beyond current capabilities.*

Issuance of a time limited approval would not be consistent with other types of zoning approvals. There is only one use permit type in the code that has a time limit placed on it: A conditional use permit for a second kitchen in a dwelling unit. .

Section 17.152 provides a mechanism for the review and potential revocation of zoning approvals. Any member of Council, the public or staff can petition for an investigation of the conformance of a telecommunications site with the conditions of approval and other code standards under which the permit was issued. Section 17.152 details the procedures for investigation of a complaint, the administrative and public hearings required and the potential remedies, including revocation of the zoning permit, that may be administered. Staff believes this procedure is superior to an arbitrary and blanket guideline that all sites be reviewed at a set time. Some sites will operate properly for their lifetime and never need to be reviewed for compliance, while other sites will not complete construction and begin operation before deviations from their conditions of approval are noted. The current enforcement procedures allow problem sites to be addressed as soon as a complaint is filed. This complaint driven approach provides for a more efficient use of staff time.

## **SUSTAINABLE OPPORTUNITIES**

**Economy:** Robust wireless access is becoming a necessity for business. Communications infrastructure will be enhanced by maintaining a balanced approach to wireless telecommunications regulations.

**Energy:** Wireless telecommunications sites are low powered and the combined energy needs for future expansion of the wireless infrastructure is small.

**Environment:** The additions to the design review standards will help protect the aesthetic environment of the City of Oakland by encouraging concealed facilities.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Disability and senior citizen access will not be affected as the text changes address facilities that are not inhabited.

## **RECOMMENDATION AND RATIONALE**

Introduce the proposed ordinance amending Planning Code sections 17.10.860 through 17.10.910, 17.128.010 through 17.128.130, and 17.134.020 through 17.134.030 to revise the Citywide Telecommunications Regulations governing the placement, design, and processing of wireless telecommunications facilities.

**ACTION REQUESTED OF THE CITY COUNCIL**

That the City Council, by motion: Introduce the text amendments to Title 17 of the Oakland Municipal Code with any further revisions Council deems appropriate.

*Respectfully submitted,*



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CLAUDIA CAPPIO  
Development Director  
Community and Economic Development Agency

Prepared by:  
Eric Angstadt, Planner IV  
*Community and Economic Development Agency*

**APPROVED AND FORWARDED TO  
THE COMMUNITY & ECONOMIC  
DEVELOPMENT COMMITTEE:**



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Office of the City Administrator

ATTACHMENT: Proposed Ordinance for Wireless Telecommunications Facilities

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2006 AUG 31 PM 6:13

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE TO AMEND THE OAKLAND PLANNING CODE SECTIONS  
17.10.860 THROUGH 17.10.910, 17.128.010 THROUGH 17.128.130, AND  
17.134.020 THROUGH 17.134.030 TO REVISE THE CITYWIDE  
TELECOMMUNICATIONS REGULATIONS**

**WHEREAS**, on June 27, 2006, the City Council adopted Urgency Ordinance No. 12750 C.M.S., pursuant to Government Code Section 65858, establishing a 45-day moratorium on the approval of permit applications for the construction, modification, or placement of wireless communication facilities; and

**WHEREAS**, on July 18, 2006, the City Council adopted Urgency ordinance No. 12762, extending the moratorium on the approval of permit applications for the construction, modification, or placement of wireless communication facilities to October 5, 2006; and

**WHEREAS**, it is the intent of the Oakland City Council to consider and adopt new zoning regulations pertaining to wireless telecommunication facilities in order to provide clear, consistent, and uniform guidance to wireless communication service providers regarding the siting and design of wireless communication facilities while also addressing the significant community concerns, and to better reflect the City's siting and regulatory objectives for wireless telecommunication facilities, all within the limitations specified in the Telecommunications Act of 1996; and

**WHEREAS**, in 6<sup>th</sup>, 13<sup>th</sup>, 20<sup>th</sup> and 27<sup>th</sup> of July 2006 the Community Economic Development Agency held focus group meetings with representatives of telecommunication industry and general public to solicit comments and discuss possible modifications to existing regulations; and

**WHEREAS**, on August 16, 2006, the Oakland Planning Commission held a noticed Public Hearing to discuss the changes described above and made a recommendation that the Oakland City Council adopt the proposed changes to the Planning Code; and,

**WHEREAS**, the City of Oakland's Community Economic Development Agency has studied the City's wireless zoning regulations, existing applicable statutory



requirements, and has prepared the following amendments to the Oakland Planning Code; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied according to Section 15061(b)(3) of the State CEQA Guidelines; and now therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

**SECTION 2.** The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Section 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**SECTION 3.** Oakland Planning Code Sections 17.10.860 through 17.10.910, 17.128.010 through 17.128.130 , and 17.134.020 through 17.134. 030 are amended to read as follows. Additions are shown as underline and omissions are shown as ~~striketrough~~.

Part 4 Telecommunications Facility Types

17.10.860 General description of Telecommunications Facilities.

Telecommunications Facilities include attachment of antennas to buildings and similar facilities, the construction of support structures, and the provision of equipment associated with transmitting and receiving of radio frequencies. (Ord. 11904 § 5.06 (part), 1996: prior planning code § 2700)

17.10.870 Micro.

A Micro Facility is an attached wireless communication facility consisting of no more than six (6) antennas that are concealed from view. If antennas are visible they may not exceed three antennas and may be no more than thirty (30) inches tall, thirteen (13) inches wide, and eight (8) inches deep. antennas whose height is equal to or less than four feet and whose area is not more than four hundred eighty (480) square inches in the aggregate (e.g., one foot diameter parabola or two foot by 1.5 foot panel) as viewed from any one point. The associated equipment cabinets are not to exceed four five (5) feet high by three feet wide by two three (3) feet deep if they are visible.

#### 17.10.880 Mini.

A Mini Facility is an attached wireless communication facility consisting of no more than twelve (12) antennas projecting no more than fifteen (15) feet above the roof line. The associated equipment cabinets are either concealed from view, or no more than six (6) feet in height and the cabinet footprint occupy an area no more than fifty (50) feet. Construction of a separate structure to enclose the equipment serving the antennas is not allowed under the Mini facility definition, unless that structure is either concealed from view or does not exceed the forgoing dimensions of an equipment cabinet. ~~three hundred sixty (360) cubic feet in size.~~

#### 17.10.890 Macro.

A Macro Facility is a wireless communication facility not included in the definition of Micro Facilities, Mini Facilities, Monopoles or Lattice Towers. (Ord. 11904 § 5.06 (part), 1996: prior planning code § 2712)

#### 17.10.900 Monopole.

A Monopole Facility is a wireless communication facility that supports wireless communications antennas with a monopolar structure erected on the ground, terminating in one or more connecting appurtenances. (Ord. 11904 § 5.06 (part), 1996: prior planning code § 2713)

#### 17.10.910 Tower.

A Tower Facility is a *self-supporting structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.* (Ord. 11904 § 5.06 (part), 1996: prior planning code § 2714)

#### 17.128.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the telecommunications regulations. The purpose and intent s-of these regulations are to provide a uniform and comprehensive set of standards for the development, location, siting and installation of wireless facilities. These regulations are intended to balance the needs of wireless communication providers, the regulatory functions of the City of Oakland, the rights guaranteed by the Federal Government and the potential impacts on the community and neighboring property owners in the design and siling of wireless facilities. The regulations are designed to promote and protect the public health, safety and welfare and the visual quality of the City of Oakland while encouraging the appropriate development of telecommunications activities throughout the city, and to prescribe the standards for evaluating telecommunications facilities. These regulations shall apply to telecommunications projects. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8500)

#### 17.128.020 Exclusions.

The following activities shall be exempt from these regulations:

- A. Ham radio operators;
- B. Microwave dishes;
- C. Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this document;
- D. Antennas and equipment cabinets or rooms completely located inside of structures and whose purpose is to enhance communications within the structures. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8501)

#### 17.128.030 Removal of Telecommunications Facilities.

The project sponsor of a proposed Telecommunications Facility shall be required to provide proof of the establishment of a sinking fund to cover the cost of removing the facility if it is abandoned within a prescribed period. As used in these provisions, the word "abandoned" shall mean a facility that has not been operational for a consecutive six-month period, except where nonoperation is the result of maintenance or renovation activity pursuant to valid city permits. The sinking fund shall be established to cover a two-year period, at a financial institution approved by the city's Office of Budget and Finance. The sinking fund payment shall be determined by the Office of Budget and Finance and shall be adequate to defray expenses associated with the removal of the Telecommunications Facility. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8502)

#### 17.128.040 Supplemental definitions.

In addition to the terms defined in Chapter 17.09, the following specific definitions shall apply in reviewing applications under the telecommunications regulations:

"Antenna" means any system of poles, panels, rods, or similar devices used for the transmission or reception of radio frequency signals.

1. "Omni-directional antenna" transmits and/or receives radio frequency signals in a three hundred sixty (360) degree radial pattern. For the purpose of this document, an omni-directional antenna is up to fifteen (15) feet in height and up to four inches in diameter.

2. "Directional antenna" (also known as a "panel" antenna) transmits and/or receives radio frequency signals in a directional pattern of less than three hundred sixty (360) degrees.

3. "Parabolic antenna" (also known as a dish antenna) means a bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.

"Attached wireless communication facility" means a wireless communication facility that is affixed to an existing structure which is not considered a component of the attached wireless communications facility.

“Completely concealed from view” or “concealed from view” means that no part of the antenna, the means by which the antenna is attached to a building or structure or the cabinets or structure containing the radio or other related equipment used to operate the site may be visible from the adjacent public right-of-way within 300 feet of the antenna.

“Collocation” exists when more than one wireless communications provider mounts equipment on a single support structure.

“Equipment cabinet” means a cabinet or other enclosure not housed in a separate building and used to house equipment used by telecommunications providers at a facility.

“Equipment shelter” or “equipment cabinet” means a cabinet or means a building used to house equipment used by telecommunications providers to house equipment at a facility.

“Ground Post Facility” means an antenna facility consisting of multiple posts mounted on the ground upon which sit antennas. If the height is up to seventeen (17) feet, it is treated as a Macro Facility and if over seventeen (17) feet, it is treated as a Monopole.

“Related equipment” means all equipment ancillary to the transmissions and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

“Wireless communication facility” means an unstaffed facility for the transmission and reception of low-power radio signals. (Ord. 11904 § 5.01 (part), 1996; prior planning code § 8503)

#### 17.128.050 Micro Facilities.

##### A. General Development Standards for Micro Facilities.

1. The Micro Facilities shall be located on existing buildings, poles or other existing support structures.
2. Antennas may not project more than one foot above the top of the structure and there may be no more than ~~six~~ ~~six~~ antennas per site. Antennas are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height, may be used for omni directional antennas providing they do not exceed four feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
3. The equipment ~~shelter or cabinet~~ must be concealed from public view ~~or made compatible with the architecture of the surrounding structures~~ or placed underground. The ~~shelter or cabinet~~ must be regularly maintained.
4. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the Federal Communications Commission.

B. Design Review Criteria for Micro Facilities. In addition to the design review criteria listed in Chapter 17.136, the following specific additional criteria must be met when design review is required before an application can be granted:

1. Antennas should be painted and/or textured to match the existing structure.
2. Antennas mounted on architecturally significant structures or significant architectural details of the building should be covered by appropriate casings which are manufactured to match existing architectural features found on the building.

3. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.

4. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

~~4. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with surrounding backdrop.~~

~~5. Equipment shelters shall be consistent with the general character of the area.~~

C. Conditional Use Permit Criteria for Micro Facilities. In addition to the conditional use criteria listed in Chapter 17.134, the following specific additional criteria must be met before a conditional use permit can be granted:

1. The project must be demonstrated to have no visual impact.

2. The project must meet the special design review criteria listed in subsection B of this section. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8505)

#### 17.128.060 Mini Facilities.

##### A. General Development Standards for Mini Facilities.

1. The Mini Facilities shall be located on existing buildings, poles or other existing support structures.

~~2. The equipment shelter or cabinet(s) must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.~~

3. Mini Facilities may exceed the height limitation specified for all zones but may not exceed fifteen (15) feet above the roof line or parapet. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

4. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the *Federal Communications Commission*.

B. Design Review Criteria for Mini Facilities. In addition to the design review criteria listed in Chapter 17.136, the following specific additional criteria must be met when design review is required before an application can be granted:

1. Antennas should be painted and/or textured to match the existing structure.

2. Antennas mounted on architecturally significant structures or significant architectural details of the building should be covered by appropriate casings which are manufactured to match existing architectural features found on the building.

3. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.

~~4. Equipment shelters or cabinets shall be completely concealed screened from the view by using landscaping, or materials and colors consistent with surrounding backdrop or placed underground.~~

5. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

~~5. Equipment shelters or cabinets shall be consistent with the general character of the area.~~

6. For antennas attached to the roof, maintain a 1:1 ratio (example: ten feet high antenna requires ten feet setback from facade) for equipment setback unless an alternative placement would reduce visual impact; treat or screen the antennas to match existing air conditioning units, stairs, elevator towers, or other background; avoid placing roof mounted antennas in direct line with significant view corridors.

C. Conditional Use Permit Criteria for Mini Facilities. In addition to the conditional use criteria listed in Chapter 17.134, the following specific additional criteria must be met before a conditional use permit can be granted:

1. The project must meet the special design review criteria listed in subsection B of this section.
2. The proposed project must not disrupt the overall community character.
3. In zones R-1 through R-60, inclusive, the project must not have any visual impact. (Ord. 12272 § 4 (part), 2000; Ord. 11904 § 5.01 (part), 1996: prior planning code § 8506)

#### 17.128.070 Macro Facilities.

A. General Development Standards for Macro Facilities.

1. The Macro Facilities shall be located on existing buildings, poles or other existing support structures, or shall be post mounted.
2. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.
3. Macro Facilities may exceed the height limitation specified for all zones but may not exceed fifteen (15) feet above the roof line or parapet. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
4. Ground post mounted Macro Facilities must not exceed seventeen (17) feet to the top of the antenna.
5. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the Federal Communications Commission.

B. Design Review Criteria for Macro Facilities. In addition to the design review criteria listed in Chapter 17.136, the following specific additional criteria must be met when design review is required before an application can be granted:

1. Antennas should be painted and/or textured to match the existing structure.
2. Antennas mounted on architecturally significant structures or significant architectural detail of the building should be covered by appropriate casings which are manufactured to match existing architectural features found on the building.
3. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.
4. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with surrounding backdrop or placed underground, inside existing facilities or behind screening fences.

5. Equipment shelters or cabinets shall be consistent with the general character of the area.
6. For antennas attached to the roof, maintain a 1:1 ratio (example: ten feet high antenna requires ten feet setback from facade) for equipment setback; screen the antennas to match existing air conditioning units, stairs, or elevator towers; avoid placing roof mounted antennas in direct line with significant view corridors.
7. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

C. Conditional Use Permit Criteria for Macro Facilities. In addition to the conditional use criteria listed in Chapter 17.134, the following specific additional criteria must be met before a conditional use permit can be granted:

1. The project must meet the special design review criteria listed in subsection B of this section.
2. The proposed project must not disrupt the overall community character. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8507)

#### 17.128.080 Monopoles.

##### A. General Development Standards for Monopoles.

1. Applicant and owner shall allow other future wireless communications companies including public and quasi-public agencies using similar technology to collocate antenna equipment and facilities on the monopole unless specific technical or other constraints, subject to independent verification at the discretion of the City of Oakland Zoning Manager, prohibit said collocation. Applicant and other wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for equitable sharing of cost in accordance with industry standards. Construction of future facilities shall not interrupt or interfere with the continuous operation of applicant's facilities.
  2. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. *The shelter or cabinet must be regularly maintained.*
  3. When a monopole is in a residential zone or adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.
  4. Monopolar structure and connecting appurtenances shall not exceed eighty (80) feet in zones M-30 and M-40, C-35 through C-60, with design review and M-20 with a conditional use permit. Monopoles are permitted up to a height of forty-five (45) feet in all other zones with a conditional use permit.
  5. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the Federal Communications Commission.
  6. Antennas may not extend more than fifteen (15) feet above their supporting structure.
- B. Design Review Criteria for Monopoles. In addition to the design review criteria listed in Chapter 17.136, the following specific additional criteria must be met when design review is required before an application can be granted:

1. Collocation is to be encouraged when it will decrease visual impact and collocation is to be discouraged when it will increase negative visual impact.

2. Monopoles should not be sited to create visual clutter or negatively affect specific views.

3. Monopoles shall be screened from the public view wherever possible.

4. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.

5. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

6. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

C. Conditional Use Permit Criteria for Monopoles. In addition to the conditional use criteria listed in Chapter 17.134, the following specific additional criteria must be met before a conditional use permit can be granted:

1. The project must meet the special design review criteria listed in subsection B of this section.

2. ~~The application must include the following:~~

~~a. If the proposed site is zoned R-1 through R-90 inclusive or C-5 through C-31 inclusive, and there are any alternate sites in M-zones or in commercial zones higher than C-31, applicants must justify why those alternate sites have not been proposed. The Planning Commission shall review with special care justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The Commission shall carefully weigh such claims, and the evidence presented in favor of them, against the project's negative impacts at the proposed site.~~

~~b. If the site proposed is zoned R-1 through R-90 inclusive or C-5 through C-31 inclusive or C-5 through C-31 inclusive, applicants must justify why the proposed height and visual impact cannot be lessened on the proposed site or by use of alternate and/or additional sites. The Planning Commission shall review with special care justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The Commission shall carefully weigh such claims, and the evidence presented in favor of them, against the project's negative impacts at the proposed site.~~

~~c. In all zones, applicants must identify, within all alternate sites, existing monopoles and lattice towers and monopoles and lattice towers for which there are applications currently on file with the Planning Department. If collocation on any such monopoles or lattice towers would result in less visual impact than the visual impact of the proposed facility, applicants must justify why such collocation is not being proposed. The Planning Commission shall review with special care justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The Commission~~



~~shall carefully weigh such claims, and evidence presented in favor of them, against the project's negative impacts at the proposed site.~~

~~d. In all the zones, applicants must demonstrate that they cannot provide service without the service of a monopole.~~

~~2.3. Monopoles should not be located any closer than one thousand five hundred (1,500) feet from existing monopoles unless technologically required or visually preferable.~~

~~3.4. The proposed project must not disrupt the overall community character.~~

5. If a major conditional use permit is required, the Planning Director or the Planning Commission may request independent expert review regarding site location, collocation and facility configuration. Any party may request that the Planning Commission consider making such request for independent expert review.

a. If there is any objection to the appointment of an independent expert engineer, the applicant must notify the Planning Director within ten days of the Commission request. The Commission will hear arguments regarding the need for the independent expert and the applicant's objection to having one appointed. The Commission will rule as to whether an independent expert should be appointed.

b. Should the Commission appoint an independent expert, the Commission will direct the Planning Director to pick an expert from a panel of licensed engineers, a list of which will be compiled, updated and maintained by the Planning Department.

c. No expert on the panel will be allowed to review any materials or investigate any application without first signing an agreement under penalty of perjury that the expert will keep confidential any and all information learned during the investigation of the application. No personnel currently employed by a telecommunication company isare eligible for inclusion on the list.

d. An applicant may elect to keep confidential any proprietary information during the expert's investigation. However, if an applicant does so elect to keep confidential various items of proprietary information, that applicant may not introduce the confidential proprietary information for the first time before the Commission in support of the application.

e. The Commission shall require that the independent expert prepare the report in a timely fashion so that it will be available to the public prior to any public hearing on the application.

f. Should the Commission appoint an independent expert, the expert's fees will be paid by the applicant through the application fee, imposed by the city. (Ord. 12272 § 4 (part), 2000; Ord. 12237 § 4 (part), 2000; Ord. 11904 § 5.01 (part), 1996; prior planning code § 8508)

#### 17.128.090 Towers.

##### A. General Development Standards for Towers.

1. Applicant and owner shall allow other future wireless communications companies including public and quasi-public agencies using similar technology to collocate antenna equipment and facilities on the monopole unless specific technical or other constraints, subject to independent verification at the discretion of the City of Oakland Zoning Manager, ~~constraints~~ prohibit said collocation. Applicant and other wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and

infrastructure and shall provide for equitable sharing of cost in accordance with industry standards. Construction of future facilities shall not interrupt or interfere with the continuous operation of applicant's facilities.

2. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground.

The shelter or cabinet must be regularly maintained.

3. When a tower is adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.

4. Antennas may not extend more than fifteen (15) feet above their supporting structure.

5. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the FCC.

B. Design Review Criteria for Towers. In addition to the design review criteria listed in Chapter 17.136, the following specific additional criteria must be met when design review is required before an application can be granted:

1. Collocation is to be encouraged when it will decrease visual impact and collocation is to be discouraged when it will increase negative visual impact.

2. Towers should not be sited to create visual clutter or negatively affect specific views.

3. Towers shall be screened from the public view wherever possible.

4. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground.

The shelter or cabinet must be regularly maintained.

5. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area. (Ord. 11904 § 5.01 (part), 1996; prior planning code § 8509)

6. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

17.128.100 Regulations apply to parks and other similar open spaces.

Telecommunications Facilities proposed in parks and other similar open spaces land shall be subject to the same regulations as set forth in the nearest residential zone. (Ord. 11904 § 5.01 (part), 1996; prior planning code § 8510)

17.128.110 Site Location Preferences.

New wireless facilities shall generally be located on the following properties or facilities in order of preference:

A. Co-located on an existing structure or facility with existing wireless antennas.

B. City owned properties or other public or quasi-public facilities.

C. Existing commercial or industrial structures in non-residential zones.

D. Existing commercial or industrial structures in residential zones.

- E. Other non-residential uses in residential zones.
- F. Residential uses in non-residential zones.
- G. Residential uses in residential zones.

Facilities locating on an A, B or C ranked preference do not require a site alternatives analysis. Facilities proposing to locate on a D through G ranked preference, inclusive, must submit a site alternatives analysis as part of the required application materials. A site alternatives analysis shall, at a minimum, consist of:

- a. The identification of all A, B and C ranked preference sites within 1,000 feet of the proposed location. If more than three sites in each preference order exist, the three such closest to the proposed location shall be required.
- b. Written evidence indicating why each such identified alternative can not be used. Such evidence shall be in sufficient detail that independent verification could be obtained if required by the City of Oakland Zoning Manager. Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing RF sources, inability to cover required area) or for other concerns (e.g. refusal to lease, inability to provide utilities).

#### 17.128.120 Site Design Preferences.

New wireless facilities shall generally be designed in the following order of preference:

- A. Building or structure mounted antennas completely concealed from view.
- B. Building or structure mounted antennas set back from roof edge, not visible from public right-of way.
- C. Building or structure mounted antennas below roof line (façade mount, pole mount) visible from public right-of-way, painted to match existing structure.
- D. Building or structure mounted antennas above roof line visible from public right-of-way.
- E. Monopoles.
- F. Towers.

Facilities designed to meet an A or B ranked preference do not require a site design alternatives analysis. Facilities designed to meet a C through F ranked preference, inclusive, must submit a site design alternatives analysis as part of the required application materials. A site design alternatives analysis shall, at a minimum, consist of:

- a. Written evidence indicating why each higher preference design alternative can not be used. Such evidence shall be in sufficient detail that independent verification could be obtained if required by the City of Oakland Zoning Manager. Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing RF sources, inability to cover required area) or for other concerns (e.g. inability to provide utilities, construction or structural impediments).

17.128.130 Radio Frequency Emissions Standards.

The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:

- a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
- b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
- c. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

17.134.020 Definition of major and minor conditional use permits.

A. Major Conditional Use Permit. A major conditional use permit is one that involves any of the following:

1. Thresholds. Any project that meets any of the following size thresholds:

- a. The actual project site (including only portions of the lot actually affected by the project) exceeds one acre;
- b. Nonresidential except in the R-80, R-90, C-51, C-55, S-2, or S-15 zones: projects involving twenty-five thousand (25,000) square feet or more of floor area;
- c. Residential, except in the S-11 zone: projects requiring a conditional use permit resulting in a total number of dwelling units as follows:
  - i. Two or more in the R-10, R-20, R-30, or R-35 zone except in the case of a Secondary Unit,
  - ii. Three or more in the R-36 or R-40 zone,
  - iii. Seven or more in the R-50, R-60, R-70, R-80, or R-90 zone.  
(In the S-11 zone, see Section 17.142.030);
- d. Large Scale Developments. Any development which is located in the R-80, R-90, C-51, C-55, S-2, or S-15 zone and involves more than one hundred thousand (100,000) square feet of new floor area, or a new building, or portion thereof, of more than one hundred twenty (120) feet in height.

2. Uses. Any project that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty (20) percent:

- a. Activities:
  - i. Residential Care Residential,
  - ii. Service Enriched Housing Residential,
  - iii. Transitional Housing Residential,
  - iv. Emergency Shelter Residential,
  - v. Extensive Impact Civic,

- vi. Convenience Market Commercial,
- vii. Fast-food Restaurant Commercial,
- viii. Alcoholic Beverage Sales Commercial or sale of alcoholic beverages at any full-service restaurant in a location described by Section 17.102.210(B),
- ix. Heavy Manufacturing,
- x. Small Scale Transfer and Storage Hazardous Waste Management,
- xi. Industrial Transfer/Storage Hazardous Waste Management,
- xii. Mining and Quarrying Extractive;
- b. Facilities:
  - i. Drive-Through,
  - ii. Advertising Sign, except when the facility meets the requirements of Section 17.11.090.
  - iii. Special Health Care Civic Activities.
- 3. Special Situations. Any project that involves any of the following situations:
  - a. Any project that requires development of an Environmental Impact Report;
  - b. Any Commercial or Manufacturing Activity, or portion thereof, which is located in any residential zone and occupies more than one thousand five hundred (1,500) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
  - c. Off-Street Parking Facilities in the C-40, C-51, C-52 and S-2 zones serving fifty (50) or more vehicles;
  - d. Transient Habitation Commercial Activities in the C-40 and C-45 zones;
  - e. Monopole Telecommunication Facilities in, or within three hundred (300) feet of the boundary of, any residential zone;
  - f. Any project in the OS zone listed as requiring a major conditional use permit in Chapter 17.11;
  - g. Continuation of an illegal use that existed in a facility in the S-14 zone prior to the Oakland Hills fire;
  - h. Any electroplating activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
  - i. Any application referred by the Director of City Planning to the City Planning Commission for decision pursuant to Section 17.134.040(B)(1).
  - j. Any telecommunications facility whose antennas and equipment are not concealed from view in a residential zone or within one hundred (100) feet of the boundary of a residential zone.

**B. Minor Conditional Use Permit.** A minor conditional use permit is a conditional use permit which does not involve any of the purposes listed in subsection A of this section. (Ord. 12501 § 80, 2003; Ord. 12450 § 19, 2002; Ord. 12350 § 3 (part), 2001; Ord. 12272 § 4 (part), 2000; Ord. 12237 § 4, 2000; Ord. 12234 § 4, 2000; Ord. 12224 § 7, 2000; Ord. 12205 § 4 (part), 2000; Ord. 12199 § 9 (part), 2000; Ord. 12138 § 4 (part), 1999; Ord. 12078 § 5 (part), 1998; Ord. 12072 § 12, 1998; Ord. 12016 § 2 (part), 1997; Ord. 11904 § 5.91, 1996; Ord. 11892 § 21, 1996; Ord. 11539 § 2, 1993; prior planning code § 9201)

17.134.030 Application.

An application for a conditional use permit shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department. The application shall be accompanied by such information including, but not limited to, site and building plans, drawings and elevations, and operational data, as may be required to enable the pertinent criteria to be applied to the proposal, and by the fee prescribed in the fee schedule in Chapter 17.150. In the OS zone, the application shall also include the most recent open space balance calculated pursuant to the no net loss provisions at Section 17.135.060, and any additional information deemed necessary by the City Planning Department. (Ord. 12078 § 5 (part), 1998: prior planning code § 9202)

**SECTION 4.** If any section, subsection, phrase, word or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

**SECTION 5.** This Ordinance shall be effective upon adoption, subject to the provisions of Section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006  
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California