

ORDINANCE NO. 847

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA ADDING CHAPTER 12.20 TO THE DUARTE MUNICIPAL CODE TO REGULATE THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES WHICH UTILIZE STREETS, PUBLIC RIGHTS-OF-WAY, AND EASEMENTS

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

Section 1. Chapter 12.20, "WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS OF WAY," of the Duarte Municipal Code is hereby adopted to read as follows:

Chapter 12.20

WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS OF WAY

Sections:

- 12.20.010 Intent and Purpose.**
- 12.20.020 Definitions.**
- 12.20.030 Permits Required.**
- 12.20.040 Submittal Requirements.**
- 12.20.050 Expert Review**
- 12.20.060 Development Standards**
- 12.20.070 Special Telecommunications Permits**
- 12.20.080 Administrative Use Permit for Wireless Communications Facilities**
- 12.20.090 Review Criteria/Standard Conditions.**

12.20.010 Intent and Purpose.

The following regulations shall apply to the installation of wireless communications facilities in the public rights of way throughout the city. These regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in the public rights of way. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, preserve the aesthetic values and scenic qualities of the city, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws.

12.20.20 Definitions.

"Agent" means a person authorized to act on behalf of a permittee or other person or entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

"Amateur (ham) radio antenna" means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person's hobby.

"Antenna" means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

"Antenna support" means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

"Array" means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting antennas in operation.

“Cable” means any wire typically consisting of copper, coax or fiber used for utility service purposes.

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site.

“Directional antenna” typically means a panel antenna used to achieve transmission or reception in a specified direction.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Eligible facilities request” means a request for modification of an existing wireless tower or base station that involves (a) co-location of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from any point at the top of an antenna and/or ancillary wireless communication structure to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure. .

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

“Monopole Tower” means an antenna support structure typically made of steel or marbelite.

“Omnidirectional antenna” means an antenna used to achieve transmission or reception in all directions.

“Permittee” means any person, persons or entity, including the city, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.

“Preferred location” means commercial and industrial zones.

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts (10^{-3} watts) or microwatts (10^{-6} watts), per unit area, usually centimeters squared.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, or is subject to an easement or dedication to the city, or is a privately owned area within the city’s jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of electromagnetic waves moving together through space radiating from a transmitting device to a receiving device to achieve wireless communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

“Substantial change in physical dimensions” means a change in the physical dimensions or configuration of a wireless communications facility that results in public safety, visual, noise or other impacts that are materially greater than those that would have existed if the wireless communications facility were installed as originally permitted. The determination whether or not the proposed modifications to a wireless communications facility constitute a substantial change in physical dimensions is context-based to be made by the director of community development or his/her designee.

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments.

12.20.030 Permits Required.

A. Upon adoption of this chapter all applicants seeking to install one or more wireless communications facilities in the public right-of-way shall, unless exempted, obtain a Special Telecommunications Permit which for the purposes of this Chapter shall be processed as a Site Plan and Design Review Case in accordance with Chapter 19.122 of the Duarte Development Code and shall be subject to the review and approval of the Architectural Review Board. Except as specified below, Architectural Review Board approval is required prior to installation of any wireless communications facilities in the public right-of-way and applicant shall pay all fees imposed in connection therewith. Such permit is in addition to any other excavation, encroachment or other permit required by Title 12 of the Duarte Municipal Code or any other provision of law.

B. The following wireless communications facilities are exempt from the requirement to obtain a Special Telecommunications Permit:

1. A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
2. A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
3. Eligible facilities requests that do not require a substantial change in physical dimensions to a wireless communications facility; and
4. Any wireless communications facilities exempted from design review by federal or state law.

C. Upon adoption of this Chapter, and unless specifically exempted by federal or state law, all eligible facilities requests that do not require a substantial change in physical dimensions of a wireless communications facility are subject to the granting of an Administrative Use Permit provided for in Section 12.20.080. In addition to such conditions as may be imposed pursuant to Section 12.20.080, all wireless communications facilities shall comply with the review criteria/standard conditions of Section 12.20.090.

12.20.040 Submittal Requirements.

In addition to the standard submittal requirements, all applications for a Special Telecommunications Permit (to be processed as a Site Plan and Design Review) or an Administrative Use Permit (the process used for eligible facilities requests) shall include the following information:

A. An accurate map, in such physical or electronic format as may be directed by the director of community development or his/her designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;

B. An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating (i) existing base level radio frequency radiation, (ii) the maximum radio frequency radiation, (iii) the effective radiated power per channel and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectored antenna at the proposed site;

C. An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;

D. An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;

E. A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;

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

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

H. The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;

I. A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;

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

K. A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;

L. A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility; and

M. Any other information related to the reasonable review of the project that is deemed necessary by the community development director.

N. All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

12.20.050 Expert Review.

In the event that the city, at the discretion of the director of community development or his/her designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- A. Compliance with applicable radio frequency emission standards;
- B. Height analysis;
- C. Configuration;
- D. The appropriateness of granting any requested exceptions;
- E. The accuracy and completeness of submissions;
- F. The applicability of analysis techniques and methodologies;
- G. The validity of conclusions reached; and
- H. Any specific technical issues designated by the city.

12.20.060 Development Standards.

The following development standards shall apply to all Special Telecommunications Permit and Administrative Use Permit applications for the installation of wireless communications facilities:

A. Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, conditional use permit or administrative use permit;

B. Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts, such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques:

1. For Pole Mounted Installations: Pole mounted installations are the generally preferred installation type for the public rights of way.
 - a. Pole mounted installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
 - b. All pole mounted installations shall be made of marbelite or metal, at the discretion of the permitting authority.
 - c. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;
 - d. In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or his/her designee may require additional measures designed to camouflage a wireless communications facility, including but not limited to enclosing the pole mounted installation entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and
 - e. The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.
2. For Structure Mounted Installations (excluding monopole installations): Unless the applicant can affirmatively demonstrate the absence of any other technically, financially, and physically feasible installation configuration, Structure Mounted Installations, including installations on traffic signals and light poles, are prohibited. If a showing of technical, financial, and physical necessity is made, then the following standards shall apply to Structure Mounted Installations (excluding monopole installations)
 - a. All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominate color of the mounting structure;
 - b. When required by the director of community development or his/her designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and

- c. Accessory wireless equipment that is not otherwise placed within a pole shall be placed in an underground vault if reasonably feasible. Underground vaults shall employ flush-to-grade access portals and vents.
 - d. Where undergrounding of equipment is not reasonably feasible, wireless communications facility installations located above the surface grade in the public right-of-way shall consist of components that are compatible in scale and proportion to the facilities they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with lighting and signal equipment.
3. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or his/her designee.
 4. For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory wireless equipment that is not otherwise placed within a pole shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be (1) selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings (2) placed and mounted in the least visually obtrusive feasible location; (3) painted or textured using colors to match or blend with the primary background, and (4) treated with a graffiti-resistant coating.

12.20.070 Special Telecommunications Permits.

A. Approval Body. The Architectural Review Board shall be the approval body for Special Telecommunications Permits.

B. Application. Application for a Special Telecommunications Permit shall be made by a property owner or agent. Applications shall provide the information required by Section 12.20.040, and such other information as prescribed by the director of community development or his/her designee.

C. Timing of Approvals. The Architectural Review Board review Special Telecommunications Permit applications within such times as are required by state and federal law.

D. Findings. The Architectural Review Board may approve a Special Telecommunications Permit provided that the following findings can be made.

1. The proposed Wireless Communications Facility is visually compatible with the surrounding neighborhoods.

2. The proposed Wireless Communications Facility is not detrimental to the public health, safety, or general welfare.

3. The proposed Wireless Communications Facility is proposed to function in compliance with all applicable regulations of the Federal Communications Commission.

12.20.080 Administrative Use Permit For Wireless Communications Facilities.

A. Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an Administrative Use Permit may be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Grants of Administrative Use Permits for such facilities is required by the Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012). This section sets forth procedures through which standard conditions and site-specific conditions may be imposed to ensure that such facilities are

compatible and harmonious with adjacent or nearby permitted uses, and in accord with existing conditions of the neighborhood site, topographic and street conditions.

B. Application. Application for an Administrative Use Permit shall be made by a property owner or agent. Applications shall provide the information required by Section 12.20.040, and such other information as prescribed by the director of community development or his/her designee.

C. Timing of Approvals. The director of community development or his/her designee shall review administrative use permit applications within such times as are required by state and federal law.

D. Findings. Prior to issuance of an Administrative Use Permit the community development director or his/her designee shall make all of the following findings:

1. The proposed use will have no substantial adverse effect upon abutting property;
2. The proposed use is consistent with the objectives and policies of the city's general plan;
3. The conditions stated in the Administrative Use Permit are deemed necessary to protect the public health, safety and general welfare;
4. To the maximum extent reasonably feasible, the proposed wireless communications facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site;
5. The wireless communications facility has been conditioned to comply with the development standards set forth in Section 12.20.060; and
6. The proposed use is permitted in the public right-of-way and complies with all applicable provisions of the Municipal Code;
7. The proposed wireless communications facility will not interfere with the use of the public right-of-way and existing improvements and utilities thereon;
8. The proposed wireless communications facility will not physically or visually interfere with vehicular, bicycle, and/or pedestrian use of streets, intersections, bicycle lanes, driveways, sidewalks and/or walkways; and
9. The proposed wireless communications facility and its location will comply with the Americans with Disabilities Act.

G. Conditions of Approval. Conditions of approval on wireless communications facilities approved by an Administrative Use Permit shall include:

1. All conditions as are necessary and appropriate to allow the director of community development or his/her designee to make the findings required by Section 12.20.080(D);
2. All conditions required by Section 12.20.090;
3. That the right to use an Administrative Use Permit shall be contingent upon the fulfillment of all general and special conditions imposed by the Administrative Use Permit ;
4. That all conditions on the Administrative Use Permit shall constitute restrictions running with the land and shall be binding upon the owner of the land and the successors or assigns;
5. That all conditions on the Administrative Use Permit shall be consented to in writing by the applicants and all owners of interests in the land;
6. That the Administrative Use Permit, together with all consent forms, shall be recorded by the clerk-recorder of Los Angeles County;
7. That the Administrative Use Permit shall be subject to review at any time upon receipt of a written complaint. The director of community development may require a reconsideration of the permit at the end of a specified time period from the date of the original approval, which reconsideration shall take account of at least the following factors: conformance with all conditions of approval, operation of the facility in its intended manner, and conformance with all applicable laws, regulations, standards and updates thereof, including radio frequency emissions and toxic or hazardous materials;
8. The permittee shall provide certifications in accordance with Section 12.20.040);
9. The permittee shall submit as-built drawings confirming that the wireless communications facility has been constructed in substantial compliance with the approved plans and permit(s);

10. The permittee shall not use, generate, store or dispose of any hazardous materials on, under, about or within wireless communications facility in violation of any law or regulation; and

11. Such further conditions of approval of the Administrative Use Permit as required to mitigate safety impacts.

H. Appeals. Appeals are subject to the provisions of Chapter 19.144, except that an appeal from the director of community development or his/her designee's decision shall be heard by the City Council; Notwithstanding any other provision of this Code, if the applicant contends that any requirement imposed pursuant to this Chapter 12.20 violates state or federal law, the applicant shall use the appeal process to seek administrative relief from such requirements. Such administrative relief may be granted by the City Council, if the City Council determines that the failure to grant administrative relief would result in a violation of state or federal law. The scope of the City Council's authority on appeal of the grant of an administrative use permit for a wireless communications facility shall be limited if, and to the extent, required by state or federal law.

I. Revocations. Revocations are subject to the provisions of Chapter 19.152

J. Modifications. Additions, enlargements or modifications of uses or structures upon property for which an Administrative Use Permit has been granted shall not be allowed except pursuant to a subsequent Administrative Use Permit as might otherwise be required or granted pursuant to the terms of this Chapter.

12.20.090 Review criteria/standard conditions.

A. Zoning Compliance. Wireless communications facilities may be permitted in any right-of-way or easements. Notwithstanding the foregoing, location on Huntington Drive, Highland Avenue and Buena Vista Street north of Duarte Road shall only be permitting upon a demonstration by the applicant that the failure to allow a proposed installation within or along those rights of way would violate state or federal law with regard to the siting of wireless communications facilities.

B. Height and Diameter. Wireless communications facilities shall be limited to a maximum height of forty (40) feet, to ensure compatibility with street lighting and other similar right-of-way equipment. The maximum pole diameter for wireless communications facilities shall be limited to eighteen (18) inches. Antenna, and antenna shrouds may be wider than 18" but in no case shall the area on the pole wider than 18" be less than 25' from the ground surface.

C. Meter Pedestals. No above-ground meter pedestals shall be permitted unless the applicant affirmatively demonstrates that an above-ground meter is the only feasible option for the proposed facility.

D. Safety. Access to wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the Architectural Review Board.

E. Aesthetics. In an effort to reduce a proposed wireless communications facility's aesthetic visual impact, the design review board or director of community development or his/her designee may request that alternative designs be developed and submitted for consideration. Aesthetic visual impact review shall include consideration of public views, including but not limited to, views from the hillsides, as well as from public parks, trails and open spaces. Co-location of wireless communications facilities is desirable, but there shall not be an unsightly proliferation of wireless communications facilities on one site, which adversely affects community scenic and aesthetic values.

F. Radio Frequency (RF) Radiation Standard. Within three months after construction of a wireless communications facility which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the city at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

G. Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified and that the equipment is operating

as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The director of community development or his/her designee shall periodically review the approved wireless communications facility sites and determine if testing is necessary. Approved wireless communications facility providers shall be notified of all such director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

H. Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

I. Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four (4) inches by six (6) inches, clearly identifying the addresses, email contact information, and 24-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

J. Maintenance.

- 1 All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility in the public right of way must be removed within 48 hours of notification.
2. All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
3. If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.
4. All wireless communications facility sites shall be kept clean and free of litter.
5. All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and 24-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

K. Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

L. Abandonment or Discontinuance of Use.

1. All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty (60) days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
2. All wireless communications facilities, or co-located portion thereof, not in use for ninety (90) days shall be considered abandoned.
3. For wireless communications facilities in the public right-of-way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or

co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.

4. For wireless communications facilities in the public right-of-way, at any time after ninety (90) days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with the Municipal Code. The city may, in lieu of storing the removed wireless communications facility, or co-located portion thereof, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.
5. For all wireless communications facilities, such bonds or cash deposit as shall be required in amounts and under terms as specified by the director of community development or his/her designee, which shall be reasonable in light of the scope and value of the proposed wireless communications facility(ies).
6. For all wireless communications facilities, such proof of insurance as shall be required in amounts and under terms as specified by the director of community development or his/her designee, which shall be reasonable in light of the scope and value of the proposed wireless communications facility(ies).

M. Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with the Municipal Code. Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

Section 2. CEQA Compliance

This Ordinance is exempt from compliance with the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 3. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 4. Posting of Ordinance.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2014.

/s/ Elizabeth Nowak Reilly
Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. 847 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 10th day of June 2014, by the following vote:

AYES: Councilmembers: Fasana, Finlay, Kang, Paras-Caracci, Reilly

NOES: Councilmembers: None

ABSENT: Councilmembers: None

/s/ Marla Akana
City Clerk Marla Akana
City of Duarte, California