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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA APPROVING MUNICIPAL CODE AMENDMENT (AMD) NO. 20-001 AMENDING CHAPTER 25 TO ADD ARTICLE VII OF THE FONTANA MUNICIPAL CODE TO ESTABLISH A PROCESS FOR THE REVIEW OF WIRELESS ~~TELECOMMUNICATION~~-FACILITIES IN THE PUBLIC RIGHT-OF-WAY

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. City staff initiated Municipal Code Amendment (AMD) No. 20-001 to amend Chapter 25 of the Municipal Code to add Article VII to establish regulations, standards, and processing procedures for wireless ~~telecommunications~~-facilities in the public right-of-way throughout the city as depicted in the Exhibit A along with a Resolution to adopt Design Standards and Location Preferences for wireless ~~telecommunication~~ facilities in the public rights-of-way.

Section 2. On December 1, 2020, the Planning Commission received public testimony and evidence presented by the applicant, City staff, and other interested parties, at the Public Hearing held with respect hereto on Municipal Code Amendment (AMD) No. 20-001.

Section 4. On January 12, 2021, the City Council held a duly noticed public hearing on Municipal Code Amendment (AMD) No. 20-001, received testimony, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is to protect and preserve the aesthetics in the community and promote the health, safety, and general welfare of the public.

Section 5. Based on the foregoing, the City of Fontana City Council determines that the project does not have a significant effect on the environment and is exempt per the California Environmental Quality Act Sections No. 15378 (Project), 15061b.3 (Review of Exemption), 15304 (Minor Alternations to Land), 15305 (Minor Alterations in Land Use Limitations), 15311 (Accessory Structures) and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA and find that the proposed design and development standards for wireless ~~telecommunication~~-facilities in the public right-of-way is to protect and preserve the aesthetics in the community and promote health, safety, and welfare of the public.

Section 6. Municipal Code Amendment (AMD) No. 20-001 is hereby approved, and the text and exhibits modified added in Article VII of Chapter 25 of the Municipal Code as shown on Exhibit "A", attached hereto and by this reference incorporated.

Section 7. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be

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published by the City Clerk at least once in the Herald News, a local newspaper of the general circulation, published and circulation in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this January 12, 2021

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council at a regular meeting on the 12th day of January 2021, and was final passed and adopted not less than five days thereafter on the 26th day of January 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk

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EXHIBIT A

CHAPTER 25

ARTICLE VII. WIRELESS ~~TELECOMMUNICATION~~ FACILITIES IN PUBLIC RIGHT-
OF-WAY

Sec. 25-247.	Purpose.
Sec. 25-248.	Definitions.
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Sec. 25-250.	Administration.
Sec. 25-251.	General Standards for Wireless Facilities in the Public Right-of-Way.
Sec. 25-252.	Applications.
Sec. 25-253.	Findings; Decisions; Consultants.
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Sec. 25-255.	Breach; Termination of Permit.
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ARTICLE VII. WIRELESS ~~TELECOMMUNICATION~~ FACILITIES IN PUBLIC RIGHT-OF-WAY

Sec. 25-247. Purpose

The purpose of this Section is to establish a process for managing, and implementing uniform standards for the placement of wireless facilities within the public right-of-way consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public right-of-way, and to ensure that the public is not inconvenienced by the use of the public right-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities in its public right-of-way. This ordinance shall be interpreted consistent with those provisions.

Sec. 25-248. Definitions.

"Application" means submission of an application for all wireless facilities under the City of Fontana Municipal Code (the "Code") for the installation and operation of wireless facilities in the public right-of-way.

"Applicant" means a person filing an application for placement or modification of a wireless facility in the public right-of-way.

"Antenna" means any ~~a system of wires, poles, rods, reflecting discs, access points, and similar devices~~ used for the transmission, reception, or both, of electromagnetic waves, ~~when such system is either ground mounted or attached to the exterior of a building or structure,~~ including those utilized by personal wireless service providers~~cellular utilities~~.

~~"Antenna height" means the distance from the grade of the property at the base of the antenna or to the highest point of the antenna and its associated support structure when fully extended.~~

"Base station" means the same as the definition set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

"Collocation" means (a) for the purposes of any Section 6409(a) modification (eligible facilities request), the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and (b) for all other purposes, the same as defined in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended, which defines "collocation" as (1) mounting or installing an

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antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“Eligible Facilities Request” means the same as the definition set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

“Equipment cabinet” means a cabinet, ~~building~~, or other ~~enclosure~~ ~~structure~~ used ~~to house equipment used~~ by wireless service ~~telecommunications~~ providers to house equipment ~~of~~ at a wireless ~~telecommunications~~ facility, or as defined by the FCC.

“Federal Communications Commission (FCC)” means the federal administrative agency, or any lawful successor, that is authorized to regulate wireless ~~telecommunications~~ services and wireless ~~telecommunications~~ service providers on a national level.

“Municipal Infrastructure” means City-owned or controlled property structures, objects, and equipment in the public right-of-way, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the public right-of-way.

“Non-commercial communication service” includes amateur (HAM) radio facilities licensed by the Federal Communications Commission (FCC) (see FCC Article II of the Fontana Municipal Code. Satellite Dish, Radio, and Television Antennas).

“Permittee” means any person or entity granted approval of a wireless application pursuant to this Article.

“Personal Wireless Services” means the same as the definition set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

“Personal Wireless Services Facility” means a wireless facility used for the provision of personal wireless services.

“Public Right-of-Way (ROW)” A portion of any road or public way that is dedicated or deeded to the public for public use and under the control of a public agency.

“Small Cell Facility” means the same as the definition of “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

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(iii) does not extend an existing structure on which it are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

“Support structure” means any structure capable of supporting a base station.

“Underground areas” means areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

“Utility Pole” means a structure in the public right-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

“Wireless Permit” means approval of a wireless application issued pursuant to this Article authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the public right-of-way.

“Wireless Services” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

“Wireless Service Provider” means an entity that provides personal wireless services to end users.

“Wireless Infrastructure Provider” means a person that owns, controls, operates, or manages a wireless facility or portion thereof with in the public right-of-way.

“Wireless Regulations” means those regulations adopted pursuant to Section 25-250 and implementing the provisions of this Article.

“Wireless ~~Telecommunications~~ Facility” means any facility constructed, installed, or operated for wireless service. “Wireless ~~telecommunications~~ facility” includes, but is not limited to, antennas or other types of equipment for the provision of wireless service transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Sec. 25-249. Scope.

1. **In general.** Unless exempted, every person who desires to place a wireless facility in the public right-of-way or modify an existing wireless facility in the public right-of-way must apply for applications specified in Sec. 25-252 and obtain a wireless permit authorizing the placement or modification in accordance with this Article. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Article.
2. **Exemptions.** This Article does not apply to:
 - a. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
 - b. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
3. **Other applicable requirements.** The placement of a wireless facility in the public right-of-way requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.
4. **Pre-existing Facilities in the Public Right-of-way.** Any wireless facility already existing in the public right-of-way as of the date of this Article’s adoption shall remain subject to the provisions of the City Code in effect prior to this Article, unless and until an extension of such facility’s then-existing permit is granted, at which time the provisions of this Article shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Article, rather than the portion(s) of the City Code that it was previously reviewed under.
5. **Public use.** Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City’s use and use by the public.

Sec. 25-250. Administration.

1. **City of Fontana Planning Division and Engineering Department.** The Planning Division, Engineering Department, or their designees are responsible for

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administering this Article. As part of the administration of this Article, the Planning Division, Engineering Department, or their designees may:

- a. Interpret the provisions of this Article;
- b. Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Article, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
- c. Develop and implement acceptable designs and development standards for wireless facilities in the public right-of-way, taking into account the zoning districts bounding the public right-of-way;
- d. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Article;
- e. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Article;
- f. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- g. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- h. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- i. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- j. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

2. Appeal.

- a. Any person adversely affected by the decision of the Planning Division, Engineering Department, or their designees pursuant to this Article may appeal the decision to the City Manager, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility.
- b. Where the Planning Division, Engineering Department, or their designees grants an application based on a finding that denial would result in a

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- prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Manager.
- c. All appeals must be filed within two (2) business days of the written decision of the Planning Division or Engineering Department, unless the Planning Division or Engineering Department, as applicable, extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - d. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

Sec. 25-251. General Standards for Wireless Facilities in the Public Right-of-Way.

1. **Generally.** Wireless facilities in the public right-of-way shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.
2. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the public right-of-way shall, at a minimum, ensure that the requirements of this Article are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Article may be waived, but only to the minimum extent required to avoid the prohibition or violation.
3. **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public right-of-way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public right of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.
4. **Design Standards and Location Preferences.** All applicants shall design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately through resolution adopted by the City Council. The Director of Community Development is authorized to update the design standards and location preferences from time to time.

Sec. 25-252. Applications.

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1. ~~Preapplication~~**Preapplicaiton** (PAM) Application and ~~Wireless Telecommunication~~ Facilities in the Public Right-of-way Application ~~and maybe any required subsequent Minor Administrative Site Plan (ASP) Application~~ are Required for all New Wireless Facilities in the Public Right-of-way (Collocation, Small Cell Facility, and All Other Types of Wireless ~~Telecommunication~~ Facilities that are not modifications or Eligible Facilities Requests): An applicant proposing to install a new wireless ~~telecommunications~~ facility on either an existing or new pole/infrastructure shall submit a PAM ~~and subsequent minor ASP~~ in conjunction with an application for wireless ~~telecommunication~~ facilities in the public right-of-way (collocation, small cell facility, and all other types of wireless ~~telecommunication~~ facilities that are not considered modifications or eligible facilities requests) ~~and along with~~ any required supplemental information towith the Planning Division, at 8353 Sierra Avenue, Fontana Ca. 92335. Pre-applications will be reviewed at a Development Advisory Board conference meeting to discuss the proposed facility, the requirements of this Article, and any potential impacts of the proposed facility.
2. ~~Wireless Telecommunication~~ ~~Wireless~~ Facilities in the Public Right-of-way Application is required for Modifications/Replacement of Existing Wireless ~~Telecommunications~~ Facilities in the Public Right-of-way (including Eligible Facilities Requests). Applications to modify/replacement ~~of~~ existing wireless ~~telecommunications~~ facilities on an existing pole/infrastructure in the public right-of-way ~~and (for projects qualifying as~~ eligible facilities requests) shall be filed with the Engineering Department, at 8353 Sierra Avenue, Fontana Ca. 92335. City staff will review the proposal along with the requirements of this Article, and any potential impacts of the proposed facility.
3. **Additional Applicable Permits.** In addition to the applications mentioned in subsections 25-252(1) and 25-252(2) above, the applicant is required to file applications for and obtain all applicable permits, such as, but not limited to, the following: Building Permits, Electrical Permits, Excavation Permit & Traffic Control Permit, Landscaping Plan Check, Certificate of Appropriateness, and Annual Blanket Permit for wireless facilities in the public right-of-way.
4. **Fees.** Application fee(s) shall be submitted with any applications.
5. **Incompleteness.** For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the City may notify the applicant in writing, and specifying the material omitted from the application.

Sec. 25-253. Findings; Decisions; Consultants.

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1. Findings Required for Approval.

- a. Except for eligible facilities requests, the Planning Division, Engineering Department, or City Manager shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - i. The facility is not detrimental to the public health, safety, and welfare;
 - ii. The facility complies with this Article and all applicable design and development standards; and
 - iii. The facility meets applicable requirements and standards of state and federal law.
 - b. For eligible facilities requests, the Engineering Department or City Manager shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - i. That the application qualifies as an eligible facilities request; and
 - ii. That the proposed facility will comply with all generally-applicable laws.
- 2. Decisions.** Decisions on an application by the Planning Division, Engineering Department, or City Manager or shall be in writing.

Sec. 25-254. Conditions of Approval.

1. **General.** In addition to any supplemental conditions imposed by the Planning Division, Engineering Department, or City Manager, all approval/permits granted pursuant to this Article shall be subject to the following conditions, unless modified by the approving authority:
 - a. Code Compliance. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of public right-of-way.
 - a-b. Permit Duration. A wireless permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the public right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

- b.c. *Commencement of Operations.* The operation of the approved facility shall commence after the completion of installation, or the wireless permit will expire without further action by the City.
- c.d. *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon [48 hours] prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within [24 hours] of doing so.
- d.e. *Contact.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
- e.f. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit as required by the Engineering Department. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide [thirty (30) days'] prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
- f.g. *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and

the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

g.h. *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.

h.i. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless permit, the Permittee shall provide the City with documentation establishing to the City's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or city utility easement to be affected by Permittee's facilities.

i.j. *No Right, Title, or Interest.* The permission granted by a wireless permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest (including franchise interest) in the public right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a wireless permit or the issuance of any other permit or exercise of any privilege given thereby.

j.k. *No Possessory Interest.* No possessory interest is created by a wireless permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

k.l. *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the permittee within [twenty-four (24) hours] after notification from the City.

- l.m. *RF Exposure Compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
- m.n. *Testing.* Testing of any equipment shall take place between the hours of 7:00am and 6:00pm on weekdays and between the hours of 8:00am and 5:00pm on Saturdays. No testing shall be conducted on Sundays or Federal Holidays.
- n.o. *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Article.
- o.p. *Agreement with City.* If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.
- p.q. *Conflicts with Improvements.* For all facilities located within the public right-of-way, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
- q.r. *Abandonment.* If a facility is not operated for a continuous period of six (6) months, the wireless permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the six (6) month] period (i) the Planning Division or its designee has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Planning Division or its designee of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Planning Division or its designee. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days

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after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

~~r.s.~~ *Encourage Co-location.* Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.

~~s.t.~~ *Records.* The permittee must maintain complete and accurate copies of all approvals/permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

~~t.u.~~ *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

2. **Eligible Facilities Requests.** In addition to the conditions provided in Section 25-254 of this Article and any supplemental conditions imposed by the Planning Division, Engineering Department, Designee, or ~~City Manager~~**Planning Commission**, as the case may be, all approvals/permits for eligible facilities requests granted pursuant to this Article shall be subject to the following additional conditions, unless modified by the approving authority:
 - a. Permit subject to conditions of underlying permit. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
 - b. No permit term extension. The city's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated

modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of an eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

- c. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
3. **Small Cell Facilities Requests.** In addition to the conditions provided in Section 25-254 of this Article and any supplemental conditions imposed by the Planning Division, Engineering Department, Designee, or City Manager~~Planning Commission~~, as the case may be, all approvals/permits for a small cell facility granted pursuant to this Article shall be subject to the following condition, unless modified by the approving authority:
- a. *No waiver of standing.* The city's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

Sec. 25-255. Breach; Termination of Permit.

1. **For breach.** A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
2. **For installation without a permit.** A wireless facility installed without a wireless permit (except for those exempted by this Article) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
3. **Violation.** Any violation of this Article will be subject to the penalties stipulated in Section 1-7 of Chapter 1 in the Fontana City Code (FCC).

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Sec. 25-256. Infrastructure Controlled by City. The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for, an agreement.

Sec. 25-257. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this article, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public right-of-way.