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DATE: January 5, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF ZONE AMENDMENT (ZA-10-00001 REVISION) AND LOCAL COASTAL PLAN AMENDMENT (LCPA-10-00001 REVISION) INTRODUCING ARTICLE 39A – AMATEUR RADIO ANTENNA REGULATIONS – TO THE CURRENT OCEANSIDE ZONING ORDINANCE, AS WELL AS THE OCEANSIDE ZONING ORDINANCE IN EFFECT ON MAY 8, 1985; A REVISION TO CITY COUNCIL POLICY 300-14 AND A REDUCTION IN FEES FOR AMATEUR RADIO FACILITY CONDITIONAL USE PERMITS – AMATEUR RADIO ANTENNA STANDARDS – APPLICANT: CITY OF OCEANSIDE**

**SYNOPSIS**

Staff recommends that the City Council: (1) adopt Zone Amendment (ZA-10-00001 Revision) and Local Coastal Plan Amendment (LCPA 10-00001 Revision) introducing Article 39A – Amateur Radio Antenna Regulations – to the current Oceanside Zoning Ordinance, as well as the Oceanside Zoning Ordinance in effect on May 8, 1985; (2) adopt the revised City Council Policy 300-14, “Enhanced Public Noticing Requirements” to allow Amateur Radio Facilities Conditional Use Permits to provide mailed notices to properties within 300 feet of the subject property; and (3) adopt a resolution establishing a \$500 fee for processing of conditional use permits for Amateur Radio facilities (exclusive of public noticing fees).

The Negative Declaration prepared for the adoption of Article 39 remains relevant for the introduction of Article 39A. The fee reduction would be exempt from the California Environmental Quality Act (CEQA) in accordance with Statutory Exemption Section 15273. The update to City Council Policy 300-14 would not be subject to CEQA as it does not meet the definition of a “project” per the CEQA guidelines.

**BACKGROUND**

On October 21, 2009, the City Council directed staff to form an Ad Hoc Committee consisting of two members of the Planning Commission and two members of the Telecommunications Committee in order to make recommendations on an update to the City’s Telecommunications Ordinance (Oceanside Zoning Ordinance [OZO] Section 3025) and the design guidelines for cellular facilities in the public rights of way.

An Ad Hoc Committee was duly formed and was comprised of two members of the Telecommunications Committee (Bob Ross and Jimmy Knott) and two members of the Planning Commission (Tom Rosales and Jay Scrivener). The Ad Hoc Committee meetings were noticed and open to the public. Staff support included individuals from Information Technologies, Economic and Community Development, City Attorney and Development Services. The Committee developed a comprehensive Ordinance that included regulations for wireless communication companies as well as amateur radio antennas.

The resultant Article 39 was inserted in both the existing Oceanside Zoning Ordinance and the previous Zoning Ordinance in effect in 1985 at the time the Local Coastal Plan was adopted. The LCP Amendment will ensure the same standards apply both in and out of the coastal zone. The new article will apply in all areas of the City, with the exception of the Redevelopment Area.

The Telecommunications Committee recommended approval of proposed Article 39, which includes all of the amateur radio antenna regulations. The Ad Hoc Committee met on June 22, 2010, to review the draft Article 39 and recommended that it be presented to the Planning Commission for consideration.

On August 23, 2010, the Planning Commission held a public hearing on the subject Oceanside Zoning Ordinance amendments and voted 6-0 to recommend approval to the City Council, with the following additional recommendations:

1. That the City Council adopt an urgency ordinance to ensure immediate implementation of the Telecommunications Ordinance.
2. That a provision be added to the proposed Telecommunication Ordinance requiring wireless telecommunication facilities located in any zone district adjacent to a residential zone district to be set back an appropriate distance from the residential property line.
3. That a provision be added to the Telecommunications Ordinance requiring a monetary penalty for wireless communication facilities that continue to operate after their conditional use permit (CUP) or administrative conditional use permit (ACUP) has expired.
4. That a provision be added to the Telecommunications Ordinance allowing reduced application fees for amateur or HAM radio operators requiring a CUP for additional height for their antenna support structures.

On October 20, 2010, the City Council adopted Article 39, Telecommunications Ordinance, as an Urgency Ordinance by a 5-0 vote. Due to significant testimony from the amateur radio community, the City Council voted to direct staff to come back to the City Council at the first meeting in January 2011, with the following additional items: (1) prepare a separate section for amateur radio facilities regulations to be placed in a separate section or article in the zoning ordinance. Draft Article 39A attached to this staff report contains regulations only for amateur radio facilities; (2) a revision to City Council Policy 300-14, Enhanced Public Noticing Requirements, to require a 300-foot

radius public noticing requirement for Amateur Radio Facilities conditional uses permits (as opposed to the current 1500 foot requirement); and (3) a resolution for adoption of a fee of \$500 for processing amateur radio facilities conditional use permits (exclusive of public noticing fees). These conditions are now being brought before the City Council for adoption.

**ANALYSIS**

Amateur radio operators have made a significant contribution to our Nation’s communications services especially during times of national or local emergencies such as Hurricane Katrina. Due to their important contributions, the Federal government through Public Law 103-408 (October 22, 1994) identifies the following areas where amateur radio operators contribute to the public good:

- 1. Voluntary noncommercial communication service, particularly with respect to providing safety of life and property through the use of radio communications;
- 2. Contributing service to the advancement of telecommunications infrastructure;
- 3. Service which encourages improvement of an individual’s technical operating skills;
- 4. Service providing a national reservoir of trained operators, technicians and electronic experts; and
- 5. Service enhancing international good will.

Based on this federal law, Congress found that “reasonable accommodations” should be made for the effective operation of amateur radio facilities from residences, private vehicles, and public areas. An analysis of this law and the “reasonable accommodations” afforded amateur radio operators is provided below.

During the public review process and public hearings for approved Article 39 - Wireless Communication Facilities - there was significant public input objecting to the inclusion of amateur radio facilities in Article 39, which mainly includes regulations for wireless telecommunication facilities. Based on this input, the City Council directed staff to create a separate ordinance exclusively for amateur radio facilities. Proposed Article 39A includes all of the regulations related to amateur radio operators that were previously included in Article 39, as directed by the City Council.

Throughout the process of drafting the Telecommunications Ordinance and at the public hearings, amateur radio operators also raised a concern regarding the high fee for processing a CUP (\$3,570) for those facilities that exceed the height limit of the zone district where they are located. Most amateur radio antennas are located in residential zones where the height limit is 36 feet for standalone antennas. Antennas located on a roof would be allowed an additional 10 feet in height. Therefore, in accordance with Public Law 103-408, staff recommends that “reasonable accommodations” be made for amateur radio operators by reducing the fee for a CUP application from \$3,570 to \$500, exclusive of public noticing mail-out fees. Public noticing fees include the cost of mailing notices to all property owners and tenants within a radius of 300 feet from the

subject property at the time of application and ten days prior to the Planning Commission hearing. A yellow sign would also need to be placed on the property in accordance with City Council Policy No. 300-14.

To further mitigate the expense of a CUP for an amateur radio antenna that exceeds the height limit, staff proposes that City Council Policy No. 300-14 (Enhanced Notification Program) be revised to require that for amateur radio tower projects notice be provided to residents living within 300 feet rather than the currently required 1,500 feet from the project site. The revision of this policy would assist in providing reasonable accommodations for future amateur radio antennas per Federal law.

Amateur radio operators have also voiced a concern about the 36-foot height limit for standalone facilities and 46-foot height limit for antennas located on a roof. Although taller antennas may be allowed with a CUP in appropriate locations as described above, staff recommends no change to this part of the proposed Article 39A for the following reasons:

- The CUP process will provide neighbors with notification of antennas that may be highly visible from the public right-of-way and surrounding properties.
- Safety concerns regarding the structural integrity of antennas in excess of 36 feet and the potential for them to fall during storm events and create damage to adjacent properties. The CUP process will allow more in-depth review of the geotechnical report and structural reports by staff and surrounding neighbors.

#### Environmental Determination

The Negative Declaration prepared for the adoption of Article 39 remains relevant for the introduction of Article 39A. The fee reduction would be exempt from the California Environmental Quality Act (CEQA) in accordance with Statutory Exemption Section 15273. The update to City Council Policy 300-14 would not be subject to CEQA as it does not meet the definition of a “project” per the CEQA guidelines.

#### FISCAL IMPACT

Fees collected will cover all administrative costs.

#### COMMISSION/COMMITTEE REVIEW

The Telecommunications Committee reviewed proposed Article 39 on June 4, 2010, and recommended by a 6-0 vote that the City Council approve Article 39, which includes all the provisions contained in Article 39A. The Ad Hoc Committee reviewed proposed Article 39 on June 22, 2010, and recommended that it be presented to the Planning Commission for consideration.

On August 23, 2010, the Planning Commission held a public hearing on the subject Oceanside Zoning Ordinance amendments and voted 6-0 to recommend approval to the City Council, with the following additional recommendations:

1. That the City Council adopt an urgency ordinance to ensure immediate implementation of the Telecommunications Ordinance.
2. That a provision be added to the proposed Telecommunication Ordinance requiring wireless telecommunication facilities located in any zone district adjacent to a residential zone district to be set back an appropriate distance from the residential property line.
3. That a provision be added to the Telecommunications Ordinance requiring a monetary penalty for wireless communication facilities that continue to operate after their conditional use permit (CUP) or administrative conditional use permit (ACUP) has expired.
4. That a provision be added to the Telecommunications Ordinance allowing reduced application fees for amateur or HAM radio operators requiring a CUP for additional height for their antenna support structures.

The Planning Commission's additional recommendations were addressed as follows:

1. The Ordinance was adopted as an urgency measure.
2. Staff added a new subsection 3911.E to Article 39, which imposes setback requirements—a "fall zone"—for standalone facilities in zones adjacent to residential zones.
3. The Administrative Remedies procedures set forth in Chapter 1 of the City Code can be used where necessary to impose monetary penalties, as applicable, for non-compliance with Article 39, including operating a wireless facility without a current CUP or ACUP.
4. The proposed resolution reduces the fee to \$500 for a CUP for an amateur radio tower. The proposed amendment of City Council Policy No. 300-14 (Enhanced Notification Program) will further reduce application costs for amateur radio facilities by providing for noticing to property owners and tenants residing within 300 feet (as opposed to 1,500 feet) from an amateur radio tower project site.

### **CITY ATTORNEY'S ANALYSIS**

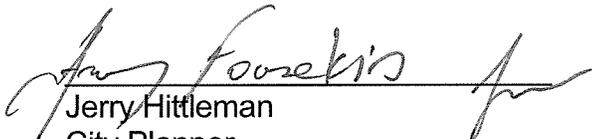
Pursuant to Zoning Ordinance Article 4506, the City Council is authorized to hold a public hearing on the proposed Zone Amendment and Local Coastal Program Amendment. Consideration of the zoning code amendments should be based on the recommendation of the Planning Commission, the record of the Planning Commission public hearing, public input, and any other evidence introduced at the public hearing on this matter. Consideration of the Local Coastal Program Amendment should be based on evidence introduced at the public hearing including public input.

After conducting the public hearing, the Council shall affirm, modify, or reject the Planning Commission's recommendation with regard to the Zone Amendment. After conducting the public hearing the Council shall approve, modify or reject the proposed Local Coastal Program Amendment. A modification not previously considered by the Commission shall be referred to the Commission for review and report prior to adoption of the proposed Zone Amendment.

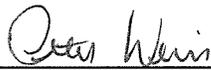
**RECOMMENDATION**

Staff recommends that the City Council: introduce Ordinance adding Article 39A, Zone Amendment (ZA-10-00001 Revision) – Amateur Radio Antenna Standards – to the current Oceanside Zoning Ordinance, as well as the Oceanside Zoning Ordinance in effect on May 8, 1985, with the exception of the Redevelopment Area; and adopt a resolution approving a Local Coastal Program Amendment (LCPA-10-00001 Revision); adopt the revised City Council Policy 300-14, “Enhanced Public Noticing Requirements” to allow Amateur Radio Facilities Conditional Use Permits to provide mailed notices to properties within 300 feet of the subject property; and adopt a resolution establishing a \$500 fee for processing of conditional use permits for Amateur Radio facilities (exclusive of public noticing fees).

PREPARED BY:

  
Jerry Hittleman  
City Planner

SUBMITTED BY:

  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
George Buell, Development Services Director


ATTACHMENTS/EXHIBITS:

1. Exhibit “A” - Zoning Ordinance Text Amendment
2. Ordinance Introducing Article 39A to the Zoning Ordinance
3. City Council Resolution Amending the Local Coastal Program
4. City Council Resolution Amending CUP fees
5. Revised City Council Policy 300-14
6. Written Communications Received to Date

## **ARTICLE 39A**

### **Amateur Radio Antenna Standards**

#### **3901A Purpose, Scope and Intent**

This Article is intended as a supplement to Article 39, to clarify standards for Amateur Radio Antennas, consistent with federal and state law, taking into account the general welfare of City residents and visual compatibility with the existing surroundings. All definitions set forth in Article 39 are hereby incorporated and made a part of this Article 39A.

#### **3902A Conditional Use Permit, When Required**

1. A Conditional Use Permit shall not be required for any Antenna Support Structure such as a mast, tower and/or building, and including the antenna(s) affixed thereto used by authorized amateur radio stations licensed by the FCC, as long as the maximum height does not exceed the greater of (a) thirty-six (36) feet above existing grade or (b) ten (10) feet above the height of the building to which the antenna and/or mast is attached, or (c) ten feet above the maximum structure height prescribed for the zone in which the antenna is located.
2. An Amateur Radio Antenna Support Structure exceeding the maximum height set forth in Section 3902A.1 shall be required to obtain one or more Conditional Use Permits pursuant to Article 41 and the applicable provisions of Article 39. In order to issue such a Conditional Use Permit, the Planning Commission, in addition to any other required findings, must also find that:
  - a. The application is submitted by an amateur radio operator licensed by the FCC;
  - b. The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the primary residence of the amateur radio operator;
  - c. Allowance of the additional height and/or width is necessary to reasonably accommodate amateur radio service communications;
  - d. Based on technical showings by the amateur radio operator applicant no lesser antenna heights and no alternative antenna structures (such as retractable antennas support structures) would reasonably accommodate the amateur radio operator's needs;
  - e. The regulation constitutes the minimum practicable regulation to accomplish the city's goal of promoting public health and safety;
  - f. The regulation does not preclude amateur radio service communications; and

- g. The installation will comply with adopted Building Codes and all other adopted health and safety codes and shall be subject to inspection by the City to determine compliance therewith.
- 3. A permit for an Amateur Radio Antenna shall be personal to the amateur radio operator to whom the permit is granted, and shall not run with the land, and shall only be transferrable to another amateur radio licensee taking possession of the property where the permitted Amateur Radio Antenna is located, upon prior application to and non-discretionary approval by the City;
- 4. A Conditional Use Permit for an Amateur Radio Antenna shall automatically terminate and the permitted facilities shall be removed within 90 days thereafter if the permittee:
  - a. has his or her amateur radio license revoked by the FCC, or
  - b. voluntarily cancels or forfeits his or her amateur radio license, or
  - ~~c.~~ does not renew his or her amateur radio license within three months after its expiration.

**3903A      Operation and Maintenance Standards**

Amateur Radio Antennas requiring a Conditional Use Permit shall comply with the following operation and maintenance standards at all times. Failure to comply shall be considered a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.

- 1. A maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No permit shall become effective until such agreement has been executed. Said agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:
  - a. Maintain the appearance of the facility;
  - b. Remove the facility when required by this Article or by any condition of approval, or when it is determined that the facility will not have been used during any current consecutive six month period, or if the facility will be abandoned;
  - c. Reimburse the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause.

**3904A      Site Development Standards**

General Development Standards. All Amateur Radio Antennas shall comply with the following:

1. Height shall be measured as follows:
  - a. Ground mounted antennas. The height of the antenna structure shall be measured from the natural undisturbed ground surface below the center of the base of the antenna support (i.e., tower) to the top of the tower or from the top of the highest antenna or piece of equipment attached thereto, whichever is higher.
  - b. Building mounted antennas. The height of the antenna structure shall be measured from the top of the building roof the antenna is mounted on to the top of the antenna or screening structure, whichever is higher.
  - c. Utility Tower/Pole Mounted Antennas. The height of the antenna structure shall be measured from the base of the utility tower/pole, not the grade of the climbing leg foundation of the structure if the climbing leg foundation of the utility tower/pole structure is not at grade due to exposed footings.
2. Amateur Radio Antennas and support structures shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located.
3. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension that is reasonably necessary for the proper functioning and physical support of the Wireless Communication Facility.
4. All Wireless Telecommunication Facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of adjacent properties, and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code. If the City Planner or Planning Commission as the case may be finds that the noise of such facility may have a detrimental effect on an adjacent property, they may require an independent acoustical analysis, at the applicant's expense, to identify appropriate mitigation measures.

**3905A      Duration, Revocation And Discontinuance**

1. Two-year expiration. A permit for a Wireless Communication Facility shall expire two years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
2. Duration of Permits and Approval.

- a. Permits for Wireless Communications Facilities shall be valid for an initial period of ten (10) years from the date of approval unless for a shorter period as authorized by California Government Code section 65964(b), or as specified by the approving body.
  - b. A permit issued pursuant to this Article may be extended at the discretion of the City Planner for a maximum of three two-year terms by the City Planner upon the applicant proving by clear and convincing evidence that the facility continues to comply with all conditions of approval under which the permit was originally approved.
  - c. A permit may be revoked pursuant to Article 47 of the Zoning Ordinance.
  - d. All costs reasonably incurred by the City in verifying compliance and in extending or revoking an approval shall be borne by the applicant and/or permit holder.
3. Abandonment or Discontinuance of Use. Any Operator of a permitted amateur radio Facility who intends to abandon or discontinue the use of the permitted Facility shall notify the City of such intention no less than 60 days prior to the final day of use.
  4. Wireless Facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
  5. All abandoned Facilities shall be physically removed by the Operator no more than 90 days following the final day of use or of determination that the Facility has been abandoned, whichever occurs first. When a Facility has been abandoned, but not removed, the City may cause such facilities to be removed and charge all expenses incurred in such removal to the Operator.

**3906A      Upgrades With New Technology**

The City finds that the technology associated with Wireless Communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that telecommunications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, and welfare that telecommunications providers be required to replace older facilities with newer equipment of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, any modifications requested to an existing facility shall permit the City Planner or his designee to review the carrier's existing facility to determine whether requiring newer equipment or applying new screening techniques that reduce visual impacts is appropriate if technically feasible.

**3907A      Green Technology**

The City anticipates that the design of “green” sites (i.e., facilities that utilize alternative energy sources and/or employ technologies that leave a smaller carbon footprint than traditional methods) will be introduced as a design alternative in the near future. New facilities that are proposed using “green” technology may not be capable of strictly complying with this Article. To accommodate these facilities and therefore balance the multiple needs of the community for energy efficiency, adequate telecommunications service and aesthetics, the City may consider factors such as whether the facility has no carbon footprint and/or whether the facility produces power through solar or wind generated means.

However, any such proposals shall not eliminate the need to comply with any or all sections of this Article and even “green” facilities shall require a Conditional Use Permit or Administrative Use Permit, as appropriate. Staff shall review each “green” application on a case by case basis and in an appropriate case, may endorse deviations from the specific design requirements of this Article when staff finds that the benefit of being “green” outweighs the potential negative impacts of not meeting all requirements of this Article.

Notwithstanding the endorsement of staff, the Planning Commission shall remain the decision-making body for all Conditional Use Permits, including those determined to be “green,” unless the matter is appealed to, or called for review by the City Council, in which case the City Council shall be the decision-making body.



1 SECTION 3. Severability. If any section, sentence, clause or phrase of this Ordinance is  
2 for any reason held to be invalid or unconstitutional by a decision of any court of competent  
3 jurisdiction, such decision shall not affect the validity of the remaining portions of this  
4 Ordinance. The City Council hereby declares that it would have passed and adopted this  
5 Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any  
6 one or more sections, subsections, sentences, clauses or phrases be declared invalid or  
7 unconstitutional.

8 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this  
9 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
10 days after its passage in the North County Times, a newspaper of general circulation published  
11 in the City of Oceanside.

12 SECTION 5. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
13 from and after its final passage.

14 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
15 California, held on the \_\_\_ day of \_\_\_\_\_, 2011 and, thereafter,

16 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
17 Oceanside, California, held on the \_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

18 AYES:

19 NAYS:

20 ABSENT:

21 ABSTAIN:

22 MAYOR OF THE CITY OF OCEANSIDE

23  
24 ATTEST:

APPROVED AS TO FORM:

25  
26 \_\_\_\_\_  
CITY CLERK

27   
CITY ATTORNEY

## ARTICLE 39A

### **Amateur Radio Antenna Standards**

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#### **3902A      Conditional Use Permit, When Required**

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2. An Amateur Radio Antenna Support Structure exceeding the maximum height set forth in Section 3902A.1 shall be required to obtain one or more Conditional Use Permits pursuant to Article 41 and the applicable provisions of Article 39. In order to issue such a Conditional Use Permit, the Planning Commission, in addition to any other required findings, must also find that:
  - a. The application is submitted by an amateur radio operator licensed by the FCC;
  - b. The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the primary residence of the amateur radio operator;
  - c. Allowance of the additional height and/or width is necessary to reasonably accommodate amateur radio service communications;
  - d. Based on technical showings by the amateur radio operator applicant no lesser antenna heights and no alternative antenna structures (such as retractable antennas support structures) would reasonably accommodate the amateur radio operator's needs;
  - e. The regulation constitutes the minimum practicable regulation to accomplish the city's goal of promoting public health and safety;
  - f. The regulation does not preclude amateur radio service communications; and

- g. The installation will comply with adopted Building Codes and all other adopted health and safety codes and shall be subject to inspection by the City to determine compliance therewith.
- 3. A permit for an Amateur Radio Antenna shall be personal to the amateur radio operator to whom the permit is granted, and shall not run with the land, and shall only be transferrable to another amateur radio licensee taking possession of the property where the permitted Amateur Radio Antenna is located, upon prior application to and non-discretionary approval by the City;
- 4. A Conditional Use Permit for an Amateur Radio Antenna shall automatically terminate and the permitted facilities shall be removed within 90 days thereafter if the permittee:
  - a. has his or her amateur radio license revoked by the FCC, or
  - b. voluntarily cancels or forfeits his or her amateur radio license, or
  - ~~c.~~ does not renew his or her amateur radio license within three months after its expiration.

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Amateur Radio Antennas requiring a Conditional Use Permit shall comply with the following operation and maintenance standards at all times. Failure to comply shall be considered a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.

- 1. A maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No permit shall become effective until such agreement has been executed. Said agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:
  - a. Maintain the appearance of the facility;
  - b. Remove the facility when required by this Article or by any condition of approval, or when it is determined that the facility will not have been used during any current consecutive six month period, or if the facility will be abandoned;
  - c. Reimburse the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause.

**3904A      Site Development Standards**

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  - b. Building mounted antennas. The height of the antenna structure shall be measured from the top of the building roof the antenna is mounted on to the top of the antenna or screening structure, whichever is higher.
  - c. Utility Tower/Pole Mounted Antennas. The height of the antenna structure shall be measured from the base of the utility tower/pole, not the grade of the climbing leg foundation of the structure if the climbing leg foundation of the utility tower/pole structure is not at grade due to exposed footings.
2. Amateur Radio Antennas and support structures shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located.
3. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension that is reasonably necessary for the proper functioning and physical support of the Wireless Communication Facility.
4. All Wireless Telecommunication Facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of adjacent properties, and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code. If the City Planner or Planning Commission as the case may be finds that the noise of such facility may have a detrimental effect on an adjacent property, they may require an independent acoustical analysis, at the applicant's expense, to identify appropriate mitigation measures.

**3905A      Duration, Revocation And Discontinuance**

1. Two-year expiration. A permit for a Wireless Communication Facility shall expire two years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
2. Duration of Permits and Approval.

- a. Permits for Wireless Communications Facilities shall be valid for an initial period of ten (10) years from the date of approval unless for a shorter period as authorized by California Government Code section 65964(b), or as specified by the approving body.
  - b. A permit issued pursuant to this Article may be extended at the discretion of the City Planner for a maximum of three two-year terms by the City Planner upon the applicant proving by clear and convincing evidence that the facility continues to comply with all conditions of approval under which the permit was originally approved.
  - c. A permit may be revoked pursuant to Article 47 of the Zoning Ordinance.
  - d. All costs reasonably incurred by the City in verifying compliance and in extending or revoking an approval shall be borne by the applicant and/or permit holder.
3. Abandonment or Discontinuance of Use. Any Operator of a permitted amateur radio Facility who intends to abandon or discontinue the use of the permitted Facility shall notify the City of such intention no less than 60 days prior to the final day of use.
  4. Wireless Facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
  5. All abandoned Facilities shall be physically removed by the Operator no more than 90 days following the final day of use or of determination that the Facility has been abandoned, whichever occurs first. When a Facility has been abandoned, but not removed, the City may cause such facilities to be removed and charge all expenses incurred in such removal to the Operator.

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**3907A      Green Technology**

The City anticipates that the design of “green” sites (i.e., facilities that utilize alternative energy sources and/or employ technologies that leave a smaller carbon footprint than traditional methods) will be introduced as a design alternative in the near future. New facilities that are proposed using “green” technology may not be capable of strictly complying with this Article. To accommodate these facilities and therefore balance the multiple needs of the community for energy efficiency, adequate telecommunications service and aesthetics, the City may consider factors such as whether the facility has no carbon footprint and/or whether the facility produces power through solar or wind generated means.

However, any such proposals shall not eliminate the need to comply with any or all sections of this Article and even “green” facilities shall require a Conditional Use Permit or Administrative Use Permit, as appropriate. Staff shall review each “green” application on a case by case basis and in an appropriate case, may endorse deviations from the specific design requirements of this Article when staff finds that the benefit of being “green” outweighs the potential negative impacts of not meeting all requirements of this Article.

Notwithstanding the endorsement of staff, the Planning Commission shall remain the decision-making body for all Conditional Use Permits, including those determined to be “green,” unless the matter is appealed to, or called for review by the City Council, in which case the City Council shall be the decision-making body.

August 23, 2010

In regards to: The proposed Article 39 zoning ordinance

Oceanside Planning Commission  
300 N. Coast Highway  
Oceanside, CA 92054-2885

Dear Commissioners,

The proposed Article 39 zoning ordinance is biased against the Amateur Radio Service (ARS.)

In order to discern a pattern; it is necessary to review each line and each paragraph (see Proposed Article 39 with comments attached.) When we do this with the proposed article, a thread of impediments emerges. Whereas the spirit of the law is intended to promote continued service by Amateur Radio, this ordinance cripples it. It goes against the "Sense of Congress" as stated in Public Law 100-594. It violates the "Joint Resolution of Congress to Recognize the achievements of Radio Amateurs as Public Record" as stated in Public Law 102-408. It ignores Part 97.1 of 47 CFR, plus both Federal and State PRB-1 statutes. The failure of the Oceanside Telecommunications Committee to consider these laws is not a simple oversight.

I propose a separate article for the ARS, based on the following reasons:

1. Mixing amateur and commercial practices defeats all the rules of writing for clarity. Their regulatory schemes are vastly different, so that separating the two would reduce the possibility for misguidance.
2. The physical design requirements for operating on amateur High Frequency wavelengths vs. shorter commercial wavelengths are profoundly different. The article should recognize this difference.
3. The cost of a Conditional Use Permit (CUP) is \$4080.00. This equals or exceeds the cost of the antenna installation and under the Article 39 guidelines is virtually guaranteed to be required for each permit application from a member of the ARS. This is unreasonable.
4. A poorly executed ordinance would result in wasting taxpayer dollars on unnecessary litigation.

Let me address each of the reasons listed above. Reason number 1 is really an understatement. Article 39 seeks to redefine the amateur radio station as "a wireless telecommunications facility". This redefinition ignores both established policy and the spirit of the law regarding the ARS as identified above. This redefinition masks the real value of the ARS in contributing to our community, to California and to the USA. The ARS provides fail-proof communications in time of major disaster and a pool of expertise in time of need. It does this without remuneration. Contrast this to commercial communications providers who work "for profit". The redefinition is then used to cloak the guidelines for the ARS with the same guidelines for commercial service providers. This is a recipe for misguidance and misinterpretation. The ARS should be addressed in a separate ordinance.

### **3901 Purpose and Intent**

This Article is intended to promote and provide for the following:

A. Establish development standards for Wireless Communications Facilities, Satellite Dish Antennas and all other forms of antennas and accessory wireless equipment consistent with federal and state law taking into account the general welfare of City residents and visual compatibility with the existing surroundings **while effectively serving the communication needs of the community.**

Comment: The communication needs of our community and also the communities around us dictate a fail-safe emergency communications capability. Catastrophes do not respect city boundaries. Radio Amateur communications are fail safe, whereas commercially provided communications are often lost during major emergencies.

B. Require all Wireless Communications Facilities to be as unobtrusive as possible, minimizing the number of freestanding and non-camouflaged Communications Facilities and establishing standards and policies to **ensure that Wireless Communications Facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.**

Comment: This discriminates against Radio Amateur HF antennas. By default it implies the same physical size constraints on amateur antennas that use high frequency (HF) as those for Wireless Communications Facilities that use microwave or cell wavelengths. However, the physical design requirements for antennas on HF wavelengths vs. shorter commercial wavelengths are profoundly different. Indiscriminate mixing of amateur and commercial practices prevents adequate consideration of their differing requirements

C. The provisions of this Article are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting **wireless communications services**, nor shall this Article be applied in such a manner as to unreasonably discriminate **among providers of functionally equivalent wireless communications services.**

Comment: This paragraph favors commercial interests, not Radio Amateurs. Upon closer investigation, the combined effects of disguising the Amateur Radio Service (ARS) as a "Wireless Communications Service" along with the indiscriminate mixing of amateur and commercial practices makes it easy for the proposed Article 39 to confound or dismiss adequate consideration of the ARS.

### 3902 Definitions

Antenna. A device used in communications which radiates and/or receives any radio or television signals **for commercial purposes**, including but not limited to, commercial cellular, **personal communication service**, wireless model signals, and/or data radio signals.

Comment: The above definition omits naming the ARS as an equal-antenna service. This taints the definitions that follow.

Actually, a definition of antenna is totally unnecessary. Note: The personal communications service (PCS) is a commercial for-profit service.

Antenna Array. Two or more antennas having active elements extending in one (1) or more directions and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

Comment: See antenna.

Antenna, Building Mounted. Antennas which are mounted to or above a building; or mounted upon or to the side of another facility or structure such as church steeples, clock towers, sports field lighting, etc.

Comment: See antenna.

Antenna Height. The vertical distance measured from the adjacent existing ground surface to the tip of the highest point of the proposed structure.

Antenna Support Structure. A pole or similar structure that supports an antenna.

Cabinet. Enclosure containing equipment used by telecommunication providers, or providing electricity or telephone service to a facility.

Comment: The definition of cabinet is unnecessary. The FCC licenses the individual amateur. The FCC does not certify the amateur's radio station equipment. This is the major difference in amateur and commercial licensing.

Camouflage or Camouflaged Facility. A Wireless Communications Facility in which **the antenna, monopole, uni-pole, and/or tower, and as possible the support equipment, are hidden from public view**, or effectively disguised as may reasonably be determined by the City Planner or Planning Commission as applicable, in a **faux tree, monument, cupola, or other concealing structure** which either mimics or which also serves as a natural or architectural feature. Concealing communications facilities in a way which do not mimic or appear as a natural or architectural feature to the average observer are not within the meaning of this definition.

Lattice Tower. An open framework freestanding structure used to support one (1) or more antennas, typically with three (3) or four (4) support legs on main vertical load bearing members.

Mast. Same as Antenna support structure.

Monopole. A structure composed of a single pole used to support antennas or related equipment.

Mounted. Attached or supported.

Nonresidential Use. Uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a conditional use permit.

Operator or Telecom Operator. Any person, firm, corporation, company or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.

Note: The above is defined by the FCC as the "Control Operator" ..

Radio Frequency. Electromagnetic waves in the frequency range of three hundred (300) kHz (three hundred thousand cycles per second) to 300 GHz (three hundred billion cycles per second).

Radome. A visually opaque, radio frequency transparent material which may be flat or cylindrical in design and is used to visually hide antennas.

Roof Mounted. Mounted above the eave line of a building.

Search Ring. The area of service deficiency within which a new facility is proposed to address the network deficiency.

Stealth Facility. A Wireless Communications Facility designed to blend into the surrounding environment and to be minimally visible. **It may appear as a natural feature, such as a tree or rock or other natural feature** or may be incorporated into an architectural feature such as a steeple, parapet wall, light standard, or be screened by an equipment screen, landscaping or other equally suitable method.

Comment: Same as Camouflage or Camouflaged Facility. There is no feasible way to disguise a ham HF antenna array because of its wavelength associated dimensions. A stealth requirement for ARS antennas would be prohibitively expensive and thus violate Section 65850.3 of California State law.

## 3903 Applicability

This Article shall apply to all Wireless Communications Facilities providing voice and/or data transmission, including but not limited to, mobile telephone services, fixed microwave services, mobile data services, and limited digitized video transmissions and services, except as provided below:

Comment: The above statement identifies various commercial providers but does not mention the ARS. It is therefore biased.

A. Exempt by State and/or Federal Regulations. A Wireless Communications Facility shall be exempt from the provisions of this Article if and to the extent state or federal law preempts local regulation of the Facility.

As of July 14, 2003, there is a preemption provided by the following:

***THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:  
SECTION 1. Section 65850.3 is added to the Government Code, to read: 65850.3. Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose. It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.***

The proposed Article 39 violates every point of California Section 65850.3 as follows:

1. It does not allow amateur radio station antenna structures to be erected at a height and dimensions sufficient to accommodate radio service communications. Other communities have made the effort. Our sister city of Costa Mesa has an antenna zoning ordinance which does address amateur radio requirements.
2. It precludes amateur radio communication. I.e. it imposes a Conditional Use Permit (CUP) fee of \$4080.00 plus other fees. These fees are out of all proportion to the costs of an amateur radio station, and do not take into account the not-for-profit nature of amateur radio. Instead, amateurs are charged the same fees as multimillion dollar commercial businesses.
3. It does not reasonably accommodate amateur radio communications. It actually employs a clever redefinition of the Amateur Radio Service to relegate it into oblivion. It completely ignores the "Sense of Congress" as stated in Public Law 100-594; and demonstrates a complete insensitivity regarding the beneficial role of amateur radio as entered into Public Law 102-408, "Joint Resolution of Congress to Recognize the Achievements of Radio Amateurs as Public Record".

setting the height limitation to 75 feet. Their zoning ordinance is a good example of the city and the amateur radio community working together.

5. City Antennas. Antennas, antenna masts, and ancillary structures owned and operated by the City.

Comment; Exempt by default? How is it that the City does not have to meet the same standards as imposed on the ARS?

C. Wireless Communication Facilities located within the public right-of-way

Comment; Exempt by default? Does this include for-profit commercial service providers?

## 3904 Conditional Use Permit Required

A Wireless Communications Facility that is not exempt pursuant to Section 3903, or other provisions of this Article, shall be required to obtain one or more Conditional Use Permits pursuant to Article 41 and in accordance with this Article as follows:

Comment: This 1<sup>st</sup> sentence above is vague. Article 41 implications should be stated clearly as to how an applicant may be required to obtain "one or more" Conditional Use Permits (CUPs.) In the context of the following subparagraphs it throws more impediments in the way of amateur radio.

A. Wireless Communications Facilities located on parcels in any zoning designation in the City unless such Facilities are entirely located in a public right-of-way, are co-located, or are sited on parcels owned or controlled by the City.

Comment: Subparagraph A. above serves to exempt commercial, for-profit "Wireless Communications Facilities" by inserting "unless". This exemplifies a technique that is used in the proposed Article 39 to imply a restriction and then turn the logic upside down to provide an exemption for commercial for-profit providers. On the other hand, the associated subparagraph below serves to restrict not-for-profit amateur radio antenna installations.

B. Amateur Radio Antennas, including the antenna support structure such as a mast, tower and/or building, and including the antenna(s) affixed thereto, that exceed in height the greater of (a) thirty-six (36) feet above ground level or (b) ten (10) feet above the height of the building to which the antenna and/or mast is attached, or (c) ten feet above the maximum structure height for the zoning district in which the antenna will be located. Provided that, in order to issue such a Conditional Use Permit, the Planning Commission, in addition to any other required findings, must also find that:

Comment: The subparagraph above is an unnecessary restatement of the antenna restrictions in Paragraph 3903. This clearly exhibits the bias of the proposed Article 39. In addition, the height requirements necessary for amateur radio antennas are already known. There is no need for the Planning Commission to make a finding. Subparagraph B is a pretext for inserting impediments and should be deleted.

1. The application is submitted by an amateur radio operator licensed by the FCC;
2. The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the primary residence of the amateur radio operator;

possession of the property where the permitted Amateur Radio Antenna is located upon prior application to and non-discretionary approval by the City; L A Conditional Use Permit for an Amateur Radio Antenna shall automatically terminate and the permitted facilities shall be removed within 90 days thereafter if the permittee:

- a. Has his or her amateur radio license revoked by the FCC, or
- b. voluntarily cancels or forfeits his or her amateur radio license, or
- c. does not renew his or her amateur radio license within three months

after its expiration.

Amateur Radio Antennas shall comply with all other applicable provisions of this Article except where specifically exempted.

Comment: The very last sentence, once again, is an unnecessary statement made to hammer home the fact that every conceivable impediment is to be placed in the way of the not-for-profit radio amateur.

### **3905 Administrative Conditional Use Permit**

Unless a Wireless Communication Facility is exempt pursuant to Section 3903 or requires one or more Conditional Use Permits pursuant to Section 3904, an Administrative Conditional Use Permit shall be required for all other proposed Wireless Communications Facilities, including, but not limited to, the following:

- A. Wireless Communication Facilities located on property owned or controlled by the City.
- B. Temporary facilities operated by Wireless Communication Providers, such as Cell on Wheel (COW) or other temporary and mobile facilities, for a maximum period of 60 days.
- C. Co-located wireless facilities located on an approved Wireless Communication Facility, except as may be permitted by Government Code section 65850.6(a).

Comment: Nothing in section 3905 applies to amateur radio. Section 3906 should state that it does not apply to the ARS.

### **3906 Application Submittal Requirements**

In addition to other application submittal requirements that are imposed by this Article, the City Planner shall develop and update as necessary an application form to permit the City to develop a suitable written administrative record in wireless planning cases. The form shall include, but not be limited to, the following for any application for a Wireless Communications Facility:

- A. Site plan, drawn to scale, indicating all existing and proposed features of the proposed site;
- B. A complete project description, including the following information regarding the proposed Wireless Communication Facility:
  - 1 Number, size and approximate orientation of antennas;
  - 2 Heights of proposed facilities;
  - 3 Equipment enclosure type and size;
  - 4 Construction timeframe for equipment enclosure;
  - 5 Materials and colors of antennas;
  - 6 Description of structures necessary to support the proposed antennas and to house ancillary equipment;
  - 7 Description of lighting;
  - 8 Description of noise/acoustical information for equipment such as air conditioning units and back-up generators;
  - 9 Description of identification and safety signage;
  - 10 Description of access to the facility;
  - 11 Description of utility line extensions needed to serve the facility;
  - 12 Backup power sources, if proposed;
  - 13 Proposed radio frequency emissions information.
- C. Floor plans, elevations and cross-sections of any proposed equipment shelter or other appurtenant structure at a scale no smaller than one-fourth inch equals one foot with clear indication of all exterior materials and colors. Paint and materials samples shall be provided.

Comment: Nothing in section 3906 applies to amateur radio. Section 3906 should state that it does not apply to the ARS.

### **3907 Findings For Approval**

In addition to any general findings otherwise required by this Article or any other provision of the Zoning Ordinance, the following findings must be made prior to the approval of a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communications Facilities (except for Amateur Radio Antennas):

A. The placement, construction, or modification of a Wireless Communications Facility in the proposed location is necessary for the provision of wireless services to City residents, businesses, and their owners, customers, guests or other persons traveling in or about the City;

B. The proposal demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources;

C. Where an applicant claims a significant gap in its coverage, that gap must be geographically defined and the gap proved by clear and convincing evidence. The burden of objectively proving a significant gap in its coverage rests solely with the applicant. Where a significant gap in the applicant's coverage is so proven, the applicant must also prove by clear and convincing evidence that the facility proposed is the least intrusive means of closing the significant gap in coverage;

D. That at least one of the following is true:

1. All applicable requirements and standards of this Article have been met;

2. A variance has been granted from any requirement or standard of this Article which has not been met; or

3. Strict compliance with the requirements and standards of this Article would not provide for adequate radio frequency signal reception and that no other alternative and less intrusive design of the facility that would meet the development standards is feasible; or

4. Strict compliance with the requirements and standards of this Article would prohibit or have the effect of prohibiting the provision of personal wireless services or would unreasonably discriminate among providers of functionally equivalent wireless communications services. The following findings must be made prior to approving a Conditional Use Permit increasing the allowable height as provided in this Article (except amateur radio antennas):

Comment: The 1<sup>st</sup> sentence in section 3907 already exempts amateur radio antennas.

### **3908 Standard Conditions of Approval**

Each Wireless Communications Facility or antenna which is approved through a conditional use permit shall be subject to the following standard conditions of approval, in addition to any other condition deemed appropriate by the City Planner or Planning Commission, as the case may be:

Comment: Section 3908 does not mention the Amateur Radio Service (ARS.) This is probably because the document from which the draft was drawn was never intended or designed to apply to Amateur Radio. The implication is that amateur radio is included under the definition of "Wireless Communications Facility". However, the following section has absolutely nothing to do with amateur radio.

The Wireless communications Facility permitted by this Section shall be erected, operated and maintained in compliance with this Article.

Comment: The above sentence adds absolutely nothing but gobbledygook.

Within 30 thirty calendar days following the installation of any Wireless Communications Facility permitted by this Article, the applicant shall provide FCC documentation to the City Planner indicating that the unit has been inspected and tested in compliance with FCC standards. Such documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, the methodology used to make the determination, the name and title of the person(s) conducting the tests, and a certification that the unit is properly installed and working within applicable FCC standards.

Comment: The implication is that amateur radio is included under the definition of "Wireless Communications Facility". However, the above section has absolutely nothing to do with amateur radio. For instance, the FCC does not document, inspect or certify any amateur radio operator's equipment. As a matter of fact, all hams are privileged by law to design, build, modify, calibrate, test, operate and experiment as they see fit. The individual amateur is licensed by the FCC, not the equipment. This is a very major difference between radio amateurs and commercial common carriers. Incorrect inferences should be omitted or the proposed Article 39 completely rewritten.

As to DAS installations, the required FCC documentation certification shall be made only by the wireless carrier(s) using the DAS system rather than the DAS system provider.

Comment: The above sentence does not apply to ARS.

1. Maintain the appearance of the facility;

Comment: Radio amateurs will undoubtedly place the antenna in their back yard. Thus, the antenna is an ancillary part of their home, which by law must be maintained. This is yet another example of the detrimental effects of trying to add on amateur radio requirements to an Ordinance that initially intended for commercial carriers.

2. Remove the facility when required by this Article or by any condition of approval, or when it is determined that the facility will not have been used during any current consecutive six month period, or if the facility will be abandoned;

Comment: What if the "facility" in question is an amateur radio antenna belonging to a military member who is sent on an overseas tour? Should that military person be forced to tear down their antenna and then reapply for a new permit when they return?

3. (Except for Amateur Radio Antennas) Pay all costs the City reasonably incurs to monitor a facility's compliance with conditions of approval and applicable law;
4. Reimburse the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause;
5. In the case of a freestanding tower or monopole (except for an Amateur Radio Antenna) the agreement shall obligate the operator and owner to lease space on the tower, at a fair market rent, to other Wireless Communication providers to the maximum extent consistent with the operational requirements of the facility, and shall further require that the permittee shall not prohibit the installation of other Wireless Communications Facilities on the same property;
6. Where the City Planner or Planning Commission or City Council, as the case may be, determines that it is necessary to ensure compliance with the conditions of approval or otherwise provide for removal of a Facility that is temporary in nature or upon its disuse, the operator or owner may be required to post a performance bond, cash or a letter of credit or other security acceptable to the City Planner in the

excess of the levels permitted by Article 38 of the City Municipal Code (noise ordinance) shall be enclosed. Backup generators shall only be used during periods of power outages or for testing.

Comment: This is yet another example of the impediments to amateur radio by an Ordinance initially intended for commercial carriers. The only time radio amateurs ever use a backup generator is for emergencies or emergency test.

- F. Temporary power may be allowed during the initial construction or major repair of a Facility for the minimal amount of time necessary to complete the work. The operator shall provide a timeline to the City Planner and keep staff updated as to the time of completion.

Comment: This is yet another example of the impediments to amateur radio by an Ordinance initially intended for commercial carriers. The only time radio amateurs ever use a backup generator is for emergencies or emergency test.

- G. Radio Frequency Emissions Safety. No Wireless Communication Facility may, by itself or in conjunction with other Wireless Communication Facilities generate radio frequency emissions in excess of the standards for permissible human exposure, as provided by applicable federal regulations including 47 C.F.R. 1.1307 *et seq.*

### **3910 Public Rights-of-Way**

Comment: Section 3910 does not apply to amateur radio.

Wireless Communication Facilities located in the City Rights-of-Way shall be required to obtain an encroachment permit prior to installation and shall be subject to the jurisdiction of the City Engineer or his designee who shall, consistent with Public Utility Code Sections 7901 and 7901.1, determine the time, place and manner of construction for all facilities located within public rights-of-way. If the City Engineer determines that a substantial portion of the Facility will be located outside the right-of-way, then the Facility shall be required to comply with this Article.

### **3911 Wireless Communication Facility Standards**

Comment: As stated below, Section 3911 below does not apply to amateur radio.

The following development and design standards shall be used to review any application for a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communication Facility pursuant to this Article and Article 41. Additionally, if any facility is proposed to be sited in the Coastal Zone as defined

### **3912 Locational and Siting Standards**

1. General. Wireless Communications Facilities (except amateur radio antennas) shall be installed on properties in the following order of preference (the greatest preference is listed first):

- a. City-owned or controlled property;
- b. Parcels located in Industrial Districts;
- c. Parcels located in Commercial Districts;
- d. Parcels located within Public and Semi Public Districts;
- e. Parcels located in Open Space Districts;
- f. Parcels located in Agricultural Districts, \*subject to the locational criteria described herein (i.e., not on or near primary residences);
- g. Parcels located in Residential Districts.

2. Wireless Communication Facility installation in a less-preferred zone shall not be permitted unless the applicant demonstrates by clear and convincing evidence that it would be infeasible to install the facility in a more preferred zone and still close a proven significant gap in coverage by the least intrusive means.

3. Wireless Communication Facilities shall be co-located where technologically feasible and where co-location would be visually superior to the otherwise necessary non-co-located facility.

4. Wireless Communication Facilities located on vacant lots shall be considered temporary and when the site is developed, the city may require such facilities be removed, and if appropriate, replaced, with building-mounted facilities.

5. Restricted Locations. No Wireless Communication Facility (except amateur radio antennas) shall be permitted in any of the residential zones or areas designated as within the coastal zone (excluding rights-of-way) unless:

- a. The facility is designed as a stealth facility; and
- b. The law otherwise requires the City to permit such location

### **3913 Site Development Standards**

Comment: Amateur radio should be exempt from Section 3913. This is merely a rehash of previous sections which reflect the notion that ARS requirements can be structurally mutated with common carrier requirements so as to impede applications by radio amateurs.

A. General Development Standards. All Wireless Communication Facilities shall comply with the following:

1. The maximum height of any Wireless Communication Facility, other than roof mounted facilities and amateur radio antennas, located on private property shall be ten feet above the maximum height allowed in the zoning district in which the facility is located. A

the applicant's expense, to identify appropriate mitigation measures.

8. Excluding those facilities that are co-located, located within the public rights-of-way, amateur radio antennas, or located on publicly owned or controlled property or utility infrastructure, Wireless Communication Facilities shall be separated from each other as follows, unless the applicant proves by clear and convincing evidence that the separation requirement would prevent the provider from closing a significant gap in its coverage:

Any new ground mounted Wireless Telecommunication Facility located within a quarter mile (1,320) feet of an existing ground mounted facility must be of camouflaged design, regardless of the zone in which it is located.

#### **3914 Safety and Monitoring Standards**

- A. At all times, Wireless Communications Facilities shall comply with the most current regulatory and operational standards including but not limited to radio frequency (RF) radiation exposure standards adopted by the FCC as provided in C.F.R. § 1.1307, et seq. and FCC Office of Engineering & Technology Bulletin 65 and antenna height standards adopted by the Federal Aviation Administration (FAA). The applicant shall maintain the most current information from the FCC regarding allowable RF emissions and all other applicable regulations and standards. The applicant shall file an annual report to the permit file advising the City of any regulatory changes that require modifications to the Wireless Communication Facility and of the measures taken by the applicant to comply with such regulatory changes.

Comment: Section 3914 above does not apply to amateur radio. The FAA antenna height standard refers to antennas at or above 200 feet in height. Further, FCC information regarding emissions is unlikely to change significantly. Since 1957, when I became a radio amateur, the frequencies and power out available to radio amateurs were very similar to those today and those that have changed are either at or less than previously assigned. Radio amateurs should be exempt from this section.

- B. Upon or prior to installation, and prior to activation, of any Wireless Communications Facility the applicant shall submit to the City certification in a form acceptable to the City that the Facility will operate in compliance with all applicable FCC regulations including, but not limited to radio frequency (RF) emissions limitations. Thereafter, upon any proposed

- A. Two year expiration. A permit for a Wireless Communication Facility shall expire two years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
- B. Duration of Permits and Approval.
  - 1. Permits for Wireless Communications Facilities shall be valid for an initial period of ten (10) years from the date of approval unless for a shorter period as authorized by California Government Code section 65964(b), or as specified by the approving body.
  - 2. A permit issued pursuant to this Article may be extended at the discretion of the City Planner for a maximum of three two-year terms by the City Planner upon the applicant proving by clear and convincing evidence that the facility continues to comply with all conditions of approval under which the permit was originally approved.
  - 3. A permit may be revoked pursuant to Article 47 of the Zoning Ordinance.
  - 4. All costs reasonably incurred by the City in verifying compliance and in extending or revoking an approval shall be borne by the applicant and/or permit holder.
- C. Abandonment or Discontinuance of Use. Any Provider who intends to abandon or discontinue the use of any wireless facility shall notify the City of such intention no less than 60 days prior to the final day of use.
- D. Wireless facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
- E. All abandoned facilities shall be physically removed by the Provider no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first. When a wireless facility has been abandoned, but not removed, the City may cause such facilities to be removed and charge all expenses incurred in such removal to the provider.

### **3916 Existing Facilities**

Comment: Section 3916 below does not apply to amateur radio.

All equipment and improvements associated with a Wireless Communication Facility permitted as of the date of the adoption of this Article may continue as they presently exist, but shall constitute a legal nonconforming use to the extent

of this Article when staff finds that the benefit of being “green” outweighs the potential negative impacts of not meeting all requirements of this Article. Notwithstanding the endorsement of staff, the Planning Commission shall remain the decision making body for all Conditional Use Permits, including those determined to be “green”, unless the matter is appealed to, or called for review by the City Council, in which case the City Council shall be the decision making body.

### **3919 Distributed Antenna Systems**

Distributed Antenna Systems Installations shall conform to the requirements of this Article.

### **3920 Federal Preemption**

Comment: As stated, Section 3920 below does not apply to amateur radio. The provision noted is for commercial carriers. However, there are other laws both Federal and State, as previously noted, that offer preemption for the unlawful impediments that the proposed Article 39 attempts to impose on the ARS.

Notwithstanding any other provision of this Article to the contrary, if any provision(s) of this Article would give rise to a claim by an applicant that a proposed action by the City would “prohibit or have the effect of prohibiting the provision of personal wireless services” within the meaning of 47 U.S.C. Section 332(c)(7) or would “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service” within the meaning of 47 U.S.C. Section 253 then, at or prior to the public hearing on the application, the applicant shall submit clear and convincing evidence attesting to all specifics of the claim. If such evidence is submitted, the decision-making body shall determine if this is the case, and if so, shall, as much as possible, keep the intent of the ordinance the same while applying the provisions in such a manner as to avoid any violation of federal law. If that is not possible, the decision-making body shall find that the provision(s) cannot be implemented in a manner that does not violate federal law, and shall override the offending provisions to the extent necessary to comply with federal law.

- mounting structure.
- B. When required by the City, 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.
  - C. The Camouflage Design Techniques applied shall result in an installation that is camouflaged and prevents the facility from visually dominating the surrounding area. Camouflage Design Techniques should be used to hide the installation from direct view from surrounding properties.
  - D. Antennas shall not be mounted on above ground water storage tanks.

#### For Monopole Installations

- A. Monopole 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 antenna components and support 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.
- C. In certain conditions, such as locations that are readily visible from residential or open space areas where there is heightened sensitivity for visual impacts and compatibility, the measures described above may not be sufficient to create an effectively camouflaged installation. In these cases, additional measures may be required by the City, including but not limited to enclosing the Wireless Communications Facility 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 the structure.
- D. 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. If Camouflage Design Techniques for monopoles do not adequately hide or prevent direct viewing of the facility, then the permit may be denied.

Co-location Facilities. Co-location installation shall use screening methods similar to those used on the existing Wireless Communication Facility. If the City Planner determines existing screening methods do not conform to the Camouflage Design standards herein, additional screening methods may be required for the



1 WHEREAS, a Negative Declaration was prepared by the Resource Officer of the City of  
2 Oceanside for this project pursuant to the California Environmental Quality Act of 1970 and the  
3 State Guidelines thereto as amended to date and hereby approved by the Planning Commission  
4 in conjunction with its recommendations on the application; and

5 WHEREAS, the City Council finds that the Local Coastal Program Amendment (LCPA-  
6 10-00001 Revision) conforms with and is adequate to carry out the land use plan of the Local  
7 Coastal Program.

8 NOW, THEREFORE, the Oceanside City Council of the City of Oceanside DOES  
9 RESOLVE as follows:

10 1. Pursuant to Public Resources Code §30510(a), the Oceanside City Council  
11 hereby certifies that the Local Coastal Program Amendment (LCPA-10-00001 Revision) is  
12 intended to be carried out in a manner fully in conformity with the Coastal Act.

13 2. Pursuant to the California Environmental Quality Act of 1970, and the State  
14 Guidelines thereto amended to date, a Negative Declaration has been issued for the project by  
15 the Resource Officer for the City of Oceanside.

16 3. Pursuant to Coastal Commission Local Coastal Program Regulations 14 CCR  
17 §13551(b), this amendment shall take effect upon Coastal Commission approval.

18 4. Notice is hereby given that the time within which judicial review must be sought  
19 on the decision is governed by Public Resources Code §30801.

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PASSED AND ADOPTED by the Oceanside City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

- AYES:
- NAYS:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Mayor of the City of Oceanside

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

*Brian D. Smeltzer*  
\_\_\_\_\_  
City Attorney

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE MODIFYING THE LOCAL COASTAL PROGRAM WITH AMENDMENTS TO VARIOUS SECTIONS OF THE 1986 OCEANSIDE ZONING ORDINANCE TO REGULATE WIRELESS COMMUNICATION FACILITIES, SATELLITE DISHES, AND ANTENNA STANDARDS AND REQUESTING CALIFORNIA COASTAL COMMISSION CERTIFICATION OF SAID AMENDMENT

1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
3 OCEANSIDE ADOPTING A REDUCED CONDITIONAL USE  
4 PERMIT DEVELOPMENT PROCESSING FEE FOR AMATEUR  
5 RADIO OPERATOR ANTENNAS

6 WHEREAS, on \_\_\_\_\_, the City Council of the City of Oceanside did conduct a  
7 duly noticed public hearing for the purposes of considering a revision to reduce the  
8 Development Processing Fee for Amateur Radio Antenna Operator Antennas Conditional Use  
9 Permits (CUPs);

10 WHEREAS, the City Council did hear all persons desiring to speak either in favor of, or  
11 in opposition to, the revisions of such fees; and

12 WHEREAS, the purpose of the reduction of the development processing fee for amateur  
13 radio operator antennas CUPs from \$3,570 to \$500, is to comply with Federal Public Law 103-  
14 408 that requires that government entities provide "reasonable accommodation" for amateur  
15 radio operators due to their important contribution to emergency communications and the  
16 nation's overall communication infrastructure.

17 NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:  
18 that the development processing fee for amateur radio antenna conditional use permits be  
19 established at \$500, exclusive of public noticing costs.

20 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,  
21 this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

22 AYES:

23 NAYS:

24 ABSENT:

25 ABSTAIN:

26 MAYOR OF THE CITY OF OCEANSIDE

27 ATTEST:

28 APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney

# DRAFT

	<b>POLICY NUMBER</b>	<b>300-14</b>
	<b>ADOPTED</b>	<b>2-25-87</b>
	<b>REVISED</b>	<b>2-14-90</b>
<b>SUBJECT:</b>	<b>REVISED</b>	<b>7-11-07</b>
<b>Enhanced Notification Program</b>	<b>REVISED</b>	<b>1-5-11</b>

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## Advance Mail Notification and Expanded Public Hearing/Administrative Decision Mail Notification of Discretionary Entitlement Proposals (\*)

It is the policy of the City Council that property owners and tenants residing within 1,500 feet from a project site shall be sent a notice via mail informing them of pending discretionary entitlement proposals (project entitlement case number, location and brief project description). Said notice shall be sent within 15 days from the project application submittal date and shall be in addition to any other notice required by the California Government Code or the City of Oceanside.

It is also the policy that the current 300-foot mail-notification radius to property owners shall be expanded to include property owners and tenants within 1,500 feet and shall be applicable to all mail notices including environmental processing notices (e.g., EIR Notice of Preparation/EIR Scoping Meetings, Notices of Availability, and pending decisions on Mitigated Negative Declarations). All costs associated with the advance and expanded noticing requirements shall be borne by the applicant and shall be set and periodically updated by the City Planner.

*(\*) This type of notification applies to all discretionary entitlement requests and excludes individual owners of time shares.*

*Discretionary approvals for single-family **and amateur radio antenna** projects shall comply with all requirements of this policy, but the notification distance shall be limited to 300 feet.*

## On-site Signage (\*\*)

It is the policy of the City Council that a "NOTICE OF PROJECT APPLICATION" shall be posted by the applicant on the project site within 15 days following submittal of a formal application for discretionary entitlement(s) that require a public hearing. The sign shall remain on-site until the appeal period for the requested entitlement(s) has expired. The notice shall be designed in accordance with and shall include the information described in the City of Oceanside on-site sign design/text information exhibit on file with the City. A "Certificate of Posting" shall be submitted to the City within 24 hours of posting.

All project site notices shall comply with the following:

1. On sites less than 5 acres, notice signage shall be posted at the most publicly visible location on site, to the satisfaction of the City. On sites

over 5 acres or with multiple public road frontages, a minimum of two signs (one per street frontage) shall be posted, to the satisfaction of the City.

2. Sign material shall be durable enough to withstand the elements.
3. Signs shall be mounted to an existing building or secured to a ground-mounted pole with a minimum pole height of four (4) feet and a maximum pole height of six (6) feet.
4. Sign dimensions shall be two (2) feet in height and three (3) feet in width.
5. Sign color background shall be yellow.
6. All letter colors shall be black.
7. Letter font shall be Arial.
8. Letter heights for the notice shall be as shown on the City's on-site sign design/text information exhibit on file in the City.
9. Applicant or developer phrases or logos shall not be allowed.
10. Applicant shall obtain City approval of text, prior to posting.
11. Any removed or damaged notices shall be replaced within 5 days from receipt of such written notification by the City. Failure to replace removed or damaged signs shall cause processing of a development proposal to be suspended.

*(\*\*) This type of notification does not apply to administrative discretionary entitlement requests.*

#### Neighborhood Planning Area Notification (\*\*\*)

It is the policy of the City Council that residents within a neighborhood planning area shall be sent a letter-type notice of public hearings scheduled for all proposed Land Use Element General Plan Amendments within that neighborhood planning area to be heard by the Planning Commission, Community Development Commission, Harbor Board of Directors and City Council.

It is also the policy that residents within a neighborhood planning area shall be sent a letter-type notice of public hearings scheduled for the Planning Commission, Community Development Commission, Harbor Board of Directors, or City Council for applications located within that neighborhood planning area involving Specific Plans, Zone Changes, Tentative Maps and/or Developments Plans for all residential projects over 20 units, and for all commercial projects over 5 acres. Additionally, any of the above-noted projects which are appealed to or otherwise heard by the City Council

shall also be subject to the letter-type notice to the residents within that neighborhood planning area. Costs associated with the noticing requirements shall be borne by the applicant and shall be set and periodically updated by the City Planner.

The 17 Neighborhood Planning Areas as identified in the Adopted Land Use Element of the General Plan shall serve as the approximate boundaries for the Neighborhood Notification Program. It is recognized that these boundaries do not directly match bulk postal carrier zone routes but do serve as the best available approximation of notice boundaries.

*(\*\*\*) This type of notification does not apply to administrative discretionary entitlement requests.*

#### Interested Party Notification List (\*\*\*\*)

It is the policy of the City Council that a mail-notification list shall be created to include all parties, including neighborhood groups and homeowner associations, who request notification of all discretionary entitlement requests.

*(\*\*\*\*) This type of notification applies to all discretionary entitlement requests.*

#### Web-Based Notification (\*\*\*\*\*)

It is the policy of the City Council that the application cover page of all discretionary entitlement requests shall be posted on the City's Web site within 15 days from the project application submittal date. All costs associated with the advance and expanded noticing requirements shall be borne by the applicant and shall be set and periodically updated by the City Planner.

*(\*\*\*\*\*) This type of notification applies to all discretionary entitlement requests.*

The failure of any persons or entity to receive notice given pursuant to this policy shall not constitute grounds for any court to invalidate the action(s) for which the notice was given. The provisions of this policy are directory in nature and shall not be deemed to create a mandatory duty the breach of which could result in liability to the City or to the officer or employee pursuant to state statute or other law. The failure to strictly observe this policy shall not affect the jurisdiction of the City Council or other applicable decision-making body from taking action on a matter for which the notice was given provided the City has complied with the noticing requirements of the California Government Code.

For purposes of this policy, "Administrative decision(s)" is defined as action(s) by the City Planner or Economic Development and Redevelopment Director on discretionary entitlement requests, as set forth in the City of Oceanside zoning ordinance.

August 23, 2010

In regards to: The proposed Article 39 zoning ordinance

Oceanside Planning Commission  
300 N. Coast Highway  
Oceanside, CA 92054-2885

Dear Commissioners,

The proposed Article 39 zoning ordinance is biased against the Amateur Radio Service (ARS.)

In order to discern a pattern; it is necessary to review each line and each paragraph (see Proposed Article 39 with comments attached.) When we do this with the proposed article, a thread of impediments emerges. Whereas the spirit of the law is intended to promote continued service by Amateur Radio, this ordinance cripples it. It goes against the "Sense of Congress" as stated in Public Law 100-594. It violates the "Joint Resolution of Congress to Recognize the achievements of Radio Amateurs as Public Record" as stated in Public Law 102-408. It ignores Part 97.1 of 47 CFR, plus both Federal and State PRB-1 statutes. The failure of the Oceanside Telecommunications Committee to consider these laws is not a simple oversight.

I propose a separate article for the ARS, based on the following reasons:

1. Mixing amateur and commercial practices defeats all the rules of writing for clarity. Their regulatory schemes are vastly different, so that separating the two would reduce the possibility for misguidance.
2. The physical design requirements for operating on amateur High Frequency wavelengths vs. shorter commercial wavelengths are profoundly different. The article should recognize this difference.
3. The cost of a Conditional Use Permit (CUP) is \$4080.00. This equals or exceeds the cost of the antenna installation and under the Article 39 guidelines is virtually guaranteed to be required for each permit application from a member of the ARS. This is unreasonable.
4. A poorly executed ordinance would result in wasting taxpayer dollars on unnecessary litigation.

Let me address each of the reasons listed above. Reason number 1 is really an understatement. Article 39 seeks to redefine the amateur radio station as "a wireless telecommunications facility". This redefinition ignores both established policy and the spirit of the law regarding the ARS as identified above. This redefinition masks the real value of the ARS in contributing to our community, to California and to the USA. The ARS provides fail-proof communications in time of major disaster and a pool of expertise in time of need. It does this without remuneration. Contrast this to commercial communications providers who work "for profit". The redefinition is then used to cloak the guidelines for the ARS with the same guidelines for commercial service providers. This is a recipe for misguidance and misinterpretation. The ARS should be addressed in a separate ordinance.

As for reason number 2, the proposed Article 39 does not provide constructive guidance as to meeting ARS antenna requirements. It merely states an arbitrary height above which a CUP will be required for all antennas either for ARS or for a commercial service provider. As of July 14, 2003, this violates California regulation SECTION 1. Section 65850.3 which states: “Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city’s or county’s legitimate purpose.” There should be a requirement-based ARS antenna height, below which a CUP would not be mandated.

As for reason number 3, considering the not-for-profit contributions to society as clearly stated by policy and laws, a \$4080 CUP plus “other” fees imposed by the proposed article are a travesty. The ARS would be stifled and Oceanside, California, and the USA would be ill-served. These fees should be eliminated or reduced to something reasonable.

As for reason number 4, the old Section 3025 of the Oceanside zoning ordinance was enacted prior to the passage of the California regulation SECTION 1. Section 65850.3. Even so, the old section is 5 pages long compared to the proposed Article 39 which is 21 pages. Therefore the confusion caused by mixing ARS and commercial policies is increased by a factor of four. This further increases the likelihood that the proposed do-all ordinance will run afoul of the law.

My attached comments are highlighted in blue. I appreciate your time in meeting with me. I will do my best to respond to any questions you may have. My email address is hamkt4fk@att.net

Sincerely,



Fred Atchley, Amateur Radio Callsign: AE6IC

Attach: Comments on Draft 6.22.10 Article 39 Wireless Communications Facility, Satellite Dish and Antenna Standards.

### **3901 Purpose and Intent**

This Article is intended to promote and provide for the following:

A. Establish development standards for Wireless Communications Facilities, Satellite Dish Antennas and all other forms of antennas and accessory wireless equipment consistent with federal and state law taking into account the general welfare of City residents and visual compatibility with the existing surroundings **while effectively serving the communication needs of the community.**

Comment: The communication needs of our community and also the communities around us dictate a fail-safe emergency communications capability. Catastrophes do not respect city boundaries. Radio Amateur communications are fail safe, whereas commercially provided communications are often lost during major emergencies.

B. Require all Wireless Communications Facilities to be as unobtrusive as possible, minimizing the number of freestanding and non-camouflaged Communications Facilities and establishing standards and policies to **ensure that Wireless Communications Facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.**

Comment: This discriminates against Radio Amateur HF antennas. By default it implies the same physical size constraints on amateur antennas that use high frequency (HF) as those for Wireless Communications Facilities that use microwave or cell wavelengths. However, the physical design requirements for antennas on HF wavelengths vs. shorter commercial wavelengths are profoundly different. Indiscriminate mixing of amateur and commercial practices prevents adequate consideration of their differing requirements

C. The provisions of this Article are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting **wireless communications services**, nor shall this Article be applied in such a manner as to unreasonably discriminate **among providers of functionally equivalent wireless communications services.**

Comment: This paragraph favors commercial interests, not Radio Amateurs. Upon closer investigation, the combined effects of disguising the Amateur Radio Service (ARS) as a "Wireless Communications Service" along with the indiscriminate mixing of amateur and commercial practices makes it easy for the proposed Article 39 to confound or dismiss adequate consideration of the ARS.

### **3902 Definitions**

Antenna. A device used in communications which radiates and/or receives any radio or television signals **for commercial purposes**, including but not limited to, commercial cellular, **personal communication service**, wireless model signals, and/or data radio signals.

Comment: The above definition omits naming the ARS as an equal-antenna service. This taints the definitions that follow.

Actually, a definition of antenna is totally unnecessary. Note: The personal communications service (PCS) is a commercial for-profit service.

Antenna Array. Two or more antennas having active elements extending in one (1) or more directions and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

Comment: See antenna.

Antenna, Building Mounted. Antennas which are mounted to or above a building; or mounted upon or to the side of another facility or structure such as church steeples, clock towers, sports field lighting, etc.

Comment: See antenna.

Antenna Height. The vertical distance measured from the adjacent existing ground surface to the tip of the highest point of the proposed structure.

Antenna Support Structure. A pole or similar structure that supports an antenna.

Cabinet. Enclosure containing equipment used by telecommunication providers, or providing electricity or telephone service to a facility.

Comment: The definition of cabinet is unnecessary. The FCC licenses the individual amateur. The FCC does not certify the amateur's radio station equipment. This is the major difference in amateur and commercial licensing.

Camouflage or Camouflaged Facility. A Wireless Communications Facility in which **the antenna, monopole, uni-pole, and/or tower, and as possible the support equipment, are hidden from public view**, or effectively disguised as may reasonably be determined by the City Planner or Planning Commission as applicable, in a **faux tree, monument, cupola, or other concealing structure** which either mimics or which also serves as a natural or architectural feature. Concealing communications facilities in a way which do not mimic or appear as a natural or architectural feature to the average observer are not within the meaning of this definition.

Comment: There is no feasible way to disguise a HF antenna beam because of its wavelength associated dimensions. A camouflage requirement for ARS antennas would be prohibitively expensive and thus violate Section 65850.3 of California State law. The proposed Article 39 should exempt Amateur Radio from any camouflage requirement.

Co-location. The placement or installation of Wireless Communications Facilities on existing structures upon which communications facilities already exist.

Comment: The above is not applicable to ARS. However, because of the inclusion of ARS in the definition of "wireless communication facilities", the above definition further encumbers ARS with all the procedures used for regulating commercial for-profit services. Those regulations impose limits on the use of different antennas for different ARS band operations. Such a limitation would violate Section 65850.3 of California State law.

"COW" (Cell on Wheels). A mobile wireless telecommunications site that consists of a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer, designed to be a part of a cellular network. Other types of temporary, mobile wireless telecommunications sites are included in this definition.

Distributed Antenna Systems (DAS). A telephone corporation operating pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission in the business of installing distributed antenna system equipment and connecting facilities including without limitation fiber optic cables, powering locations, and hub locations.

Needed: The definition of a high frequency (HF) antenna beam because of its wavelength associated dimensions.

FCC. The Federal Communications Commission or any successor to that agency.

Front-yard Visibility. The facility is visible from the front yard of any existing residential unit. **Except that, a wireless facility located within the public right-of-way along rear yards of residential units is not considered to have "front yard visibility" even if a portion of the facility can be viewed from a front yard.** To qualify under this exception, a solid wall or fence at least five feet in height must exist between the wireless facility and the rear yard of the residential unit.

Comment: If a commercial provider's system is exempt by special consideration then ARS should also receive the same consideration. Such bias violates Section 65850.3 of California State law.

Lattice Tower. An open framework freestanding structure used to support one (1) or more antennas, typically with three (3) or four (4) support legs on main vertical load bearing members.

Mast. Same as Antenna support structure.

Monopole. A structure composed of a single pole used to support antennas or related equipment.

Mounted. Attached or supported.

Nonresidential Use. Uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a conditional use permit.

Operator or Telecom Operator. Any person, firm, corporation, company or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.

Note: The above is defined by the FCC as the "Control Operator" ..

Radio Frequency. Electromagnetic waves in the frequency range of three hundred (300) kHz (three hundred thousand cycles per second) to 300 GHz (three hundred billion cycles per second).

Radome. A visually opaque, radio frequency transparent material which may be flat or cylindrical in design and is used to visually hide antennas.

Roof Mounted. Mounted above the eave line of a building.

Search Ring. The area of service deficiency within which a new facility is proposed to address the network deficiency.

Stealth Facility. A Wireless Communications Facility designed to blend into the surrounding environment and to be minimally visible. **It may appear as a natural feature, such as a tree or rock or other natural feature** or may be incorporated into an architectural feature such as a steeple, parapet wall, light standard, or be screened by an equipment screen, landscaping or other equally suitable method.

Comment: Same as Camouflage or Camouflaged Facility. There is no feasible way to disguise a ham HF antenna array because of its wavelength associated dimensions. A stealth requirement for ARS antennas would be prohibitively expensive and thus violate Section 65850.3 of California State law.

Support Equipment. The physical, electrical and or electronic equipment included within a Wireless Communications Facility used to house, power, and or process signals to or from the facility's antenna(s).

Comment: Like "Cabinet "above, the definition of support equipment is unnecessary. The FCC licenses the individual amateur. The FCC does not approve or certify the amateur's radio station equipment. This is one of the major differences in amateur and commercial licensing.

Telecommunications Facility, Telecom Facility, Wireless Telecommunications Facility, Wireless Communications Facility or Facility. An installation that sends and or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand-held radios/telephones and their associated transmitting antennas.

Comment: The above definition is a complete dismissal of the historical definition of amateur radio; by Congress; by the FCC and recently; by Section 65850.3 of California State law. This ignominious definition, combined with the proposed Article 39's manner of mutating amateur with commercial regulations plus the preferential exemptions for for-profit commercial carriers is a deceptive and anti ARS. It creates a procedural demur which favors built-in requirements written for commercial providers. Every Radio Amateur application will waste valuable resources just to realize a lawful right. This is not what the spirit of the law intended.

Uni-pole. A monopole that does not have antenna elements other than the pole itself or the antenna elements are concealed inside a radome of the same diameter as the pole or exceeding the pole diameter by no greater than six (6) inches.

## 3903 Applicability

This Article shall apply to all Wireless Communications Facilities providing voice and/or data transmission, including but not limited to, mobile telephone services, fixed microwave services, mobile data services, and limited digitized video transmissions and services, except as provided below:

Comment: The above statement identifies various commercial providers but does not mention the ARS. It is therefore biased.

A. Exempt by State and/or Federal Regulations. A Wireless Communications Facility shall be exempt from the provisions of this Article if and to the extent state or federal law preempts local regulation of the Facility.

As of July 14, 2003, there is a preemption provided by the following:

***THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:  
SECTION 1. Section 65850.3 is added to the Government Code, to read: 65850.3. Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose. It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.***

The proposed Article 39 violates every point of California Section 65850.3 as follows:

1. It does not allow amateur radio station antenna structures to be erected at a height and dimensions sufficient to accommodate radio service communications. Other communities have made the effort. Our sister city of Costa Mesa has an antenna zoning ordinance which does address amateur radio requirements.
2. It precludes amateur radio communication. I.e. it imposes a Conditional Use Permit (CUP) fee of \$4080.00 plus other fees. These fees are out of all proportion to the costs of an amateur radio station, and do not take into account the not-for-profit nature of amateur radio. Instead, amateurs are charged the same fees as multimillion dollar commercial businesses.
3. It does not reasonably accommodate amateur radio communications. It actually employs a clever redefinition of the Amateur Radio Service to relegate it into oblivion. It completely ignores the "Sense of Congress" as stated in Public Law 100-594; and demonstrates a complete insensitivity regarding the beneficial role of amateur radio as entered into Public Law 102-408, "Joint Resolution of Congress to Recognize the Achievements of Radio Amateurs as Public Record".

4. It does not constitute minimum practical regulation. As a matter of fact, it constitutes the complete opposite. This proposed zoning ordinance is 21 pages of gobbledygook. It is intended to replace Section 3025 which is 6 pages. By comparison, the City of Costa Mesa antenna zoning ordinance is eight pages. Note that Oceanside's Section 3025 went into effect before California's Section 65850.3 was enacted.

B. Exempt Subject to Locational Requirements. The following are exempt from the provisions of this Article if such facilities meet all required setbacks and development standards as outlined in the particular zoning district in which the facility will be sited.

1. Radio or Television Antenna. Any single ground or building mounted receive only radio or television antenna for the sole use of owners or occupants of the parcel or common interest development on which such antenna is located. The maximum height of such antenna shall not exceed ten (10) feet higher than the building height prescribed for the zone in which the antenna is located.

2. Satellite Dish Antenna. Up to three (3) ground or building mounted receive only radio or television satellite dish antennas, not exceeding one meter in diameter for the sole use of owners or occupants of the parcel or unit in the common interest development on which the antenna is located.

3. Citizen Band Antenna. Any ground or building-mounted citizens' band radio antenna not exceeding thirty-six (36) feet above existing grade, including any mast.

4. Amateur Radio Antenna. Any antenna support structure such as a mast, tower and/or building, and including the antenna(s) affixed thereto used by authorized amateur radio stations licensed by the FCC provided that the maximum height shall not exceed the greater of (a) thirty-six (36) feet above existing grade or (b) ten (10) feet above the height of the building to which the antenna and/or mast is attached, or (c) ten feet above the maximum structure height prescribed for the zone in which the antenna is located.

Comment: The above limitation ignores the requirements of ARS. A minimum height of a half (1/2) wavelength is required for efficient operation. e.g. one of the most heavily relied upon bands assigned to ARS is the 7.0 to 7.3 MHz band. At 7 MHz the necessary height is 70 feet over perfect ground. At this height, the signal is transmitted outward at a reasonable angle of about 30 degrees. On the other hand, if the height is pushed down to one quarter (1/4) wavelength, or 35 feet, then ground effects induce 90 degree (upward) patterns for both transmission and reception. This wastes most of the transmitted energy heating up clouds. Unfortunately, increasing power to compensate for wasted transmitter output does not compensate for the associated loss in received signal strength. The City of Costa Mesa addressed amateur radio antenna requirements by

setting the height limitation to 75 feet. Their zoning ordinance is a good example of the city and the amateur radio community working together.

5. City Antennas. Antennas, antenna masts, and ancillary structures owned and operated by the City.

Comment; Exempt by default? How is it that the City does not have to meet the same standards as imposed on the ARS?

C. Wireless Communication Facilities located within the public right-of-way

Comment; Exempt by default? Does this include for-profit commercial service providers?

## 3904 Conditional Use Permit Required

A Wireless Communications Facility that is not exempt pursuant to Section 3903, or other provisions of this Article, shall be required to obtain one or more Conditional Use Permits pursuant to Article 41 and in accordance with this Article as follows:

Comment: This 1<sup>st</sup> sentence above is vague. Article 41 implications should be stated clearly as to how an applicant may be required to obtain "one or more" Conditional Use Permits (CUPs.) In the context of the following subparagraphs it throws more impediments in the way of amateur radio.

A. Wireless Communications Facilities located on parcels in any zoning designation in the City unless such Facilities are entirely located in a public right-of-way, are co-located, or are sited on parcels owned or controlled by the City.

Comment: Subparagraph A. above serves to exempt commercial, for-profit "Wireless Communications Facilities" by inserting "unless". This exemplifies a technique that is used in the proposed Article 39 to imply a restriction and then turn the logic upside down to provide an exemption for commercial for-profit providers. On the other hand, the associated subparagraph below serves to restrict not-for-profit amateur radio antenna installations.

B. Amateur Radio Antennas, including the antenna support structure such as a mast, tower and/or building, and including the antenna(s) affixed thereto, that exceed in height the greater of (a) thirty-six (36) feet above ground level or (b) ten (10) feet above the height of the building to which the antenna and/or mast is attached, or (c) ten feet above the maximum structure height for the zoning district in which the antenna will be located. Provided that, in order to issue such a Conditional Use Permit, the Planning Commission, in addition to any other required findings, must also find that:

Comment: The subparagraph above is an unnecessary restatement of the antenna restrictions in Paragraph 3903. This clearly exhibits the bias of the proposed Article 39. In addition, the height requirements necessary for amateur radio antennas are already known. There is no need for the Planning Commission to make a finding. Subparagraph B is a pretext for inserting impediments and should be deleted.

1. The application is submitted by an amateur radio operator licensed by the FCC;

2. The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the primary residence of the amateur radio operator;

Comment: The above statement implies that the amateur radio operator cannot operate "portable" which by FCC rules is legal. The FCC requires only that a licensed "control operator" be in charge of all station operations. Subparagraph 2 serves no purpose and should be deleted.

3. Allowance of the additional height and/or width is necessary to reasonably accommodate amateur radio service communications;

Comment: Even the 70 foot height for a 40 Meter antenna is a compromise because there are other ARS bands with longer wavelengths such as 160, 80 and 60 Meters. By compromising operation on longer wavelength bands the radio amateur could still have efficient communications on the 40 Meter and shorter wavelength bands.

4. Based on technical showings by the amateur radio operator applicant no lesser antenna heights and no alternative antenna structures (such as retractable antennas support structures) would reasonably accommodate the amateur radio operator's needs;

5. The regulation constitutes the minimum practicable regulation to accomplish the city's goal of promoting public health and safety;

Comment: This and previous subparagraphs imply that the height limitation on ham radio antennas is a means of promoting public health and safety. Since this is not the case, the injection of health and safety straw men at this point can only be considered for what they are: intentional impediments.

6. The regulation does not preclude amateur radio service communications;

Comment: The regulation imposes a minimum CUP fee of \$4080.00 on a not-for-profit radio amateur which is easily more than the cost of the amateur station. This could certainly preclude amateur radio service communications for many who are living on retirement wages. The for-profit commercial businesses on the other hand, are exempt. This is certainly biased against amateur radio.

7. The installation will comply with adopted Building Codes and all other adopted health and safety codes and shall be subject to inspection by the City to determine compliance therewith;

Comment: The "adopted Building Codes and all other adopted health and safety codes" should be stated clearly herein and not left up to imagination.

8. A permit for an Amateur Radio Antenna shall be personal to the amateur radio operator to whom the permit is granted, and shall not run with the land, and shall only be transferrable to another amateur radio licensee taking

possession of the property where the permitted Amateur Radio Antenna is located upon prior application to and non-discretionary approval by the City; L A Conditional Use Permit for an Amateur Radio Antenna shall automatically terminate and the permitted facilities shall be removed within 90 days thereafter if the permittee:

- a. Has his or her amateur radio license revoked by the FCC, or
- b. voluntarily cancels or forfeits his or her amateur radio license, or
- c. does not renew his or her amateur radio license within three months after its expiration.

Amateur Radio Antennas shall comply with all other applicable provisions of this Article except where specifically exempted.

Comment: The very last sentence, once again, is an unnecessary statement made to hammer home the fact that every conceivable impediment is to be placed in the way of the not-for-profit radio amateur.

### **3905 Administrative Conditional Use Permit**

Unless a Wireless Communication Facility is exempt pursuant to Section 3903 or requires one or more Conditional Use Permits pursuant to Section 3904, an Administrative Conditional Use Permit shall be required for all other proposed Wireless Communications Facilities, including, but not limited to, the following:

- A. Wireless Communication Facilities located on property owned or controlled by the City.
- B. Temporary facilities operated by Wireless Communication Providers, such as Cell on Wheel (COW) or other temporary and mobile facilities, for a maximum period of 60 days.
- C. Co-located wireless facilities located on an approved Wireless Communication Facility, except as may be permitted by Government Code section 65850.6(a).

Comment: Nothing in section 3905 applies to amateur radio. Section 3906 should state that it does not apply to the ARS.

### **3906 Application Submittal Requirements**

In addition to other application submittal requirements that are imposed by this Article, the City Planner shall develop and update as necessary an application form to permit the City to develop a suitable written administrative record in wireless planning cases. The form shall include, but not be limited to, the following for any application for a Wireless Communications Facility:

- A. Site plan, drawn to scale, indicating all existing and proposed features of the proposed site;
- B. A complete project description, including the following information regarding the proposed Wireless Communication Facility:
  - 1 Number, size and approximate orientation of antennas;
  - 2 Heights of proposed facilities;
  - 3 Equipment enclosure type and size;
  - 4 Construction timeframe for equipment enclosure;
  - 5 Materials and colors of antennas;
  - 6 Description of structures necessary to support the proposed antennas and to house ancillary equipment;
  - 7 Description of lighting;
  - 8 Description of noise/acoustical information for equipment such as air conditioning units and back-up generators;
  - 9 Description of identification and safety signage;
  - 10 Description of access to the facility;
  - 11 Description of utility line extensions needed to serve the facility;
  - 12 Backup power sources, if proposed;
  - 13 Proposed radio frequency emissions information.
- C. Floor plans, elevations and cross-sections of any proposed equipment shelter or other appurtenant structure at a scale no smaller than one-fourth inch equals one foot with clear indication of all exterior materials and colors. Paint and materials samples shall be provided.

D. Photo simulations depicting the actual size of the proposed Facility, including all antennas and equipment shelters, shall be submitted for review. The number of photo simulations required to fully depict the impact of the facility on the surrounding area shall be at the discretion of the City Planner.

E. A landscape plan including but not limited to landscaping or vegetation replacement and maintenance consistent with the type of facility proposed and the zone in which it is located.

F. A plan for maintenance of the site, including trash removal, graffiti removal within 48 hours, and facility upkeep.

G. Proof of any existing gap(s) in coverage, and the radius of area from which an antenna may be located to eliminate the gap(s).

H. A justification study with a search ring indicating the rationale for selection of the proposed site, in view of the relative merits of any feasible alternative site within the service area. This study shall also include the applicant's master plan which indicates the proposed site in relation to the provider's existing and proposed network of sites within the City and surrounding areas, including map and narrative description of each site. For modifications or alterations to existing facilities, the applicant shall submit a justification study limited to the need to modify, alter or expand the facility.

I. Documentation that the proposed Facility complies with all applicable FCC rules, regulations and standards.

J. A statement that includes a declaration regarding the facility's capacity for future co-location, supporting information regarding why the proposed wireless facility location is required, and an explanation as to why the site was not co-located. In the case of non co-located ground-mounted facilities, applications shall state the alternative sites considered and provide substantial evidence why they were rejected. The applicant shall demonstrate good faith to co-locate on existing facilities.

K. A description of services offered in conjunction with the proposed facility.

L. At the discretion of the City Planner, the City may hire an independent, qualified consultant (the "Technical Consultant") to evaluate any technical aspect of the proposed Communication Facility, including but not limited to: drive test data that indicate current site coverages and proposed coverages; potential for interference with existing or planned public safety emergency response telecommunication facilities; analysis of feasibility of alternate screening methods or devices; or, alternate (more suitable) locations. Where the City Planner elects to hire a Technical Consultant, the applicant shall deposit with the City a sum equal to the expected fee of the Technical Consultant and shall promptly reimburse the City for all reasonable costs associated with the consultation exceeding the expected fee. Any unexpended deposit held by the City at the time of withdrawal or final action on the application shall be promptly returned to the applicant.

M. Any additional items deemed necessary by the City Planner to make the findings required in Section 3907.

Comment: Nothing in section 3906 applies to amateur radio. Section 3906 should state that it does not apply to the ARS.

### **3907 Findings For Approval**

In addition to any general findings otherwise required by this Article or any other provision of the Zoning Ordinance, the following findings must be made prior to the approval of a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communications Facilities (except for Amateur Radio Antennas):

A. The placement, construction, or modification of a Wireless Communications Facility in the proposed location is necessary for the provision of wireless services to City residents, businesses, and their owners, customers, guests or other persons traveling in or about the City;

B. The proposal demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources;

C. Where an applicant claims a significant gap in its coverage, that gap must be geographically defined and the gap proved by clear and convincing evidence. The burden of objectively proving a significant gap in its coverage rests solely with the applicant. Where a significant gap in the applicant's coverage is so proven, the applicant must also prove by clear and convincing evidence that the facility proposed is the least intrusive means of closing the significant gap in coverage;

D. That at least one of the following is true:

1. All applicable requirements and standards of this Article have been met;

2. A variance has been granted from any requirement or standard of this Article which has not been met; or

3. Strict compliance with the requirements and standards of this Article would not provide for adequate radio frequency signal reception and that no other alternative and less intrusive design of the facility that would meet the development standards is feasible; or

4. Strict compliance with the requirements and standards of this Article would prohibit or have the effect of prohibiting the provision of personal wireless services or would unreasonably discriminate among providers of functionally equivalent wireless communications services. The following findings must be made prior to approving a Conditional Use Permit increasing the allowable height as provided in this Article (except amateur radio antennas):

Comment: The 1<sup>st</sup> sentence in section 3907 already exempts amateur radio antennas.

A. Alternatives have been provided to staff, including but not limited to additional and/or different locations and designs, and staff has determined that the application as approved would have a lesser impact on the aesthetics and welfare of the surrounding community as compared to other alternatives;

B. Based on evidence presented the additional height greater than ten (10) feet above the maximum building height for the applicable zone is reasonably necessary for co-location of facilities for the efficient operation of the proposed facility; and

C. Any negative impacts of the proposed facility are properly mitigated.

### **3908 Standard Conditions of Approval**

Each Wireless Communications Facility or antenna which is approved through a conditional use permit shall be subject to the following standard conditions of approval, in addition to any other condition deemed appropriate by the City Planner or Planning Commission, as the case may be:

Comment: Section 3908 does not mention the Amateur Radio Service (ARS.) This is probably because the document from which the draft was drawn was never intended or designed to apply to Amateur Radio. The implication is that amateur radio is included under the definition of "Wireless Communications Facility". However, the following section has absolutely nothing to do with amateur radio.

The Wireless communications Facility permitted by this Section shall be erected, operated and maintained in compliance with this Article.

Comment: The above sentence adds absolutely nothing but gobbledygook.

Within 30 thirty calendar days following the installation of any Wireless Communications Facility permitted by this Article, the applicant shall provide FCC documentation to the City Planner indicating that the unit has been inspected and tested in compliance with FCC standards. Such documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, the methodology used to make the determination, the name and title of the person(s) conducting the tests, and a certification that the unit is properly installed and working within applicable FCC standards.

Comment: The implication is that amateur radio is included under the definition of "Wireless Communications Facility". However, the above section has absolutely nothing to do with amateur radio. For instance, the FCC does not document, inspect or certify any amateur radio operator's equipment. As a matter of fact, all hams are privileged by law to design, build, modify, calibrate, test, operate and experiment as they see fit. The individual amateur is licensed by the FCC, not the equipment. This is a very major difference between radio amateurs and commercial common carriers. Incorrect inferences should be omitted or the proposed Article 39 completely rewritten.

As to DAS installations, the required FCC documentation certification shall be made only by the wireless carrier(s) using the DAS system rather than the DAS system provider.

Comment: The above sentence does not apply to ARS.

The installation of any Wireless Communications Facility shall be in compliance with all applicable provisions of the State Building Standards Code and any applicable local amendments thereto.

Comment: The above sentence adds absolutely nothing but gobbledygook. What are these applicable provisions?

Any substantial change in the type of antenna and/or facility installed in a particular location shall require the prior approval of the City Planner or his designee. Failure to obtain the prior approval of the City Planner or his designee may be grounds for institution of use permit revocation proceedings as well as grounds to institute any other enforcement action available under federal, state or local law.

Comment: The FCC specifically allows and the regulations are designed to encourage amateur radio operators to experiment with equipment such as radios transmitters, amplifiers and antennas. The regulatory statement above is in direct opposition to the Federal regulation Part 97.1 of 47 CFR and violates California regulation SECTION 1. Section 65850.3.

Co-location of Wireless Communications Facilities pursuant to this Article shall be required whenever feasible.

Comment: The above sentence does not apply to ARS.

### **3909 Operation and Maintenance Standards**

Wireless Communication Facilities shall comply with the following operation and maintenance standards at all times. Failure to comply shall be considered a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.

- A. Except for exempt facilities, a maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No permit shall become effective until such agreement has been executed. Said agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:

Comment: Why should any facilities be exempt from maintenance standards? For instance, by law, all residence occupants are required to maintain their premises whether they have an antenna on it or not

1. Maintain the appearance of the facility;

Comment: Radio amateurs will undoubtedly place the antenna in their back yard. Thus, the antenna is an ancillary part of their home, which by law must be maintained. This is yet another example of the detrimental effects of trying to add on amateur radio requirements to an Ordinance that initially intended for commercial carriers.

2. Remove the facility when required by this Article or by any condition of approval, or when it is determined that the facility will not have been used during any current consecutive six month period, or if the facility will be abandoned;

Comment: What if the "facility" in question is an amateur radio antenna belonging to a military member who is sent on an overseas tour? Should that military person be forced to tear down their antenna and then reapply for a new permit when they return?

3. (Except for Amateur Radio Antennas) Pay all costs the City reasonably incurs to monitor a facility's compliance with conditions of approval and applicable law;
4. Reimburse the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause;
5. In the case of a freestanding tower or monopole (except for an Amateur Radio Antenna) the agreement shall obligate the operator and owner to lease space on the tower, at a fair market rent, to other Wireless Communication providers to the maximum extent consistent with the operational requirements of the facility, and shall further require that the permittee shall not prohibit the installation of other Wireless Communications Facilities on the same property;
6. Where the City Planner or Planning Commission or City Council, as the case may be, determines that it is necessary to ensure compliance with the conditions of approval or otherwise provide for removal of a Facility that is temporary in nature or upon its disuse, the operator or owner may be required to post a performance bond, cash or a letter of credit or other security acceptable to the City Planner in the

amount of ten thousand dollars (\$10,000), or such higher amount as the City Planner reasonably determines is necessary to ensure compliance with the maintenance and facility removal agreement. This requirement shall not apply to an amateur radio antenna.

- B. Each Wireless Communication Facility shall include signage approved by the City Planner identifying the name and phone number of a party to contact in the event of an emergency. Such signage must comply with any applicable provisions of this Article and Article 33 (sign ordinance).

Comment: Why should any sign be placed in the back yard of any home? What good will it do, other than be an eyesore to the neighbors? Why not just require every residence to post a sign on the front door so fire and police will have information about who lives inside?

- C. Wireless Communication Facilities and the sites on which they are located shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism. Any damage from any cause shall be corrected within five days of written notice by the City. Graffiti shall be removed as soon as practicable, and in no event longer than 48 hours after notice by the City.

Comment: Radio amateurs will undoubtedly place the antenna in their back yard. Thus, the antenna is an ancillary part of their home, which by law must be maintained. This is yet another example of the detrimental effects of trying to add on amateur radio requirements to an Ordinance that initially intended for commercial carriers.

- D. The owner or operator of a Wireless Communication Facility shall maintain landscaping in accordance with an approved landscape plan and shall replace dying or dead trees, foliage or other landscape elements shown on the approved plans within 30 days of written notification by City. Amendments or modifications of the approved landscape plan shall not be made without written City approval.

Comment: Radio amateurs will undoubtedly place the antenna in their back yard. Thus, the antenna is an ancillary part of their home, which by law must be maintained. This is yet another example of the detrimental effects of trying to add on amateur radio requirements to an Ordinance that initially intended for commercial carriers.

- E. A Wireless Communication Facility shall be operated to minimize noise impacts to surrounding residents and persons using nearby facilities and recreation areas. All equipment that may emit noise in

excess of the levels permitted by Article 38 of the City Municipal Code (noise ordinance) shall be enclosed. Backup generators shall only be used during periods of power outages or for testing.

Comment: This is yet another example of the impediments to amateur radio by an Ordinance initially intended for commercial carriers. The only time radio amateurs ever use a backup generator is for emergencies or emergency test.

- F. Temporary power may be allowed during the initial construction or major repair of a Facility for the minimal amount of time necessary to complete the work. The operator shall provide a timeline to the City Planner and keep staff updated as to the time of completion.

Comment: This is yet another example of the impediments to amateur radio by an Ordinance initially intended for commercial carriers. The only time radio amateurs ever use a backup generator is for emergencies or emergency test.

- G. Radio Frequency Emissions Safety. No Wireless Communication Facility may, by itself or in conjunction with other Wireless Communication Facilities generate radio frequency emissions in excess of the standards for permissible human exposure, as provided by applicable federal regulations including 47 C.F.R. 1.1307 *et seq.*

### **3910 Public Rights-of-Way**

Comment: Section 3910 does not apply to amateur radio.

Wireless Communication Facilities located in the City Rights-of-Way shall be required to obtain an encroachment permit prior to installation and shall be subject to the jurisdiction of the City Engineer or his designee who shall, consistent with Public Utility Code Sections 7901 and 7901.1, determine the time, place and manner of construction for all facilities located within public rights-of-way. If the City Engineer determines that a substantial portion of the Facility will be located outside the right-of-way, then the Facility shall be required to comply with this Article.

### **3911 Wireless Communication Facility Standards**

Comment: As stated below, Section 3911 below does not apply to amateur radio.

The following development and design standards shall be used to review any application for a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communication Facility pursuant to this Article and Article 41. Additionally, if any facility is proposed to be sited in the Coastal Zone as defined

by the Local Coastal Program (LCP) such facility must also comply with all applicable provisions of the LCP. All Wireless Communication Facilities (except amateur radio antennas) shall be planned, designed, located, erected, operated, and maintained in accordance with the following standards:

- A. Wireless Communication Facilities shall comply with all development standards within the applicable zoning district of the subject site, except parking and landscape coverage.
- B. Height limits for all Wireless Communication Facilities shall be in accordance with this Article.
- C. All Wireless Communication Facilities and Accessory Wireless Equipment shall comply with the applicable provisions of Articles 33 (sign ordinance) and 38 (noise ordinance) of the City's Municipal Code.
- D. Visual Impact Screening Standards: All Wireless Communication Facilities shall to the greatest extent reasonably possible employ Camouflage Design Techniques to minimize visual impacts and provide appropriate screening. The Facility shall be maintained at all times in a "like new" condition and such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible. 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 Camouflage Design Techniques shall be considered based on different installation situations.

For building mounted installations.

- A. Screening materials matched in color, size, proportion, style, texture, and quality with the exterior design and architectural character of the structure and the surrounding visual environment.
- B. Facility components, including all antenna panels, shall be mounted either inside the structure or behind the proposed screening elements and not on the exterior face of the structure.
- C. The Camouflage Design Techniques applied shall result in an installation that is camouflaged and prevents the facility from visually dominating the surrounding area. Camouflage Design Techniques should be used to hide the installation from predominant views from surrounding properties.

For Structure Mounted Installations excluding Monopole Installations

- A. All antenna panels and accessory components mounted on the exterior of the structure shall be painted and textured or otherwise coated to match the predominant color and surface texture of the

### **3912 Locational and Siting Standards**

1. General. Wireless Communications Facilities (except amateur radio antennas) shall be installed on properties in the following order of preference (the greatest preference is listed first):

- a. City-owned or controlled property;
- b. Parcels located in Industrial Districts;
- c. Parcels located in Commercial Districts;
- d. Parcels located within Public and Semi Public Districts;
- e. Parcels located in Open Space Districts;
- f. Parcels located in Agricultural Districts, \*subject to the locational criteria described herein (i.e., not on or near primary residences);
- g. Parcels located in Residential Districts.

2. Wireless Communication Facility installation in a less-preferred zone shall not be permitted unless the applicant demonstrates by clear and convincing evidence that it would be infeasible to install the facility in a more preferred zone and still close a proven significant gap in coverage by the least intrusive means.

3. Wireless Communication Facilities shall be co-located where technologically feasible and where co-location would be visually superior to the otherwise necessary non-co-located facility.

4. Wireless Communication Facilities located on vacant lots shall be considered temporary and when the site is developed, the city may require such facilities be removed, and if appropriate, replaced, with building-mounted facilities.

5. Restricted Locations. No Wireless Communication Facility (except amateur radio antennas) shall be permitted in any of the residential zones or areas designated as within the coastal zone (excluding rights-of-way) unless:

- a. The facility is designed as a stealth facility; and
- b. The law otherwise requires the City to permit such location

### **3913 Site Development Standards**

Comment: Amateur radio should be exempt from Section 3913. This is merely a rehash of previous sections which reflect the notion that ARS requirements can be structurally mutated with common carrier requirements so as to impede applications by radio amateurs.

A. General Development Standards. All Wireless Communication Facilities shall comply with the following:

1. The maximum height of any Wireless Communication Facility, other than roof mounted facilities and amateur radio antennas, located on private property shall be ten feet above the maximum height allowed in the zoning district in which the facility is located. A

Conditional Use Permit may be granted to exceed the height limitation as described in Article 41 and Section 3707.

2. Height shall be measured as follows:
  - a. Ground mounted antennas. The height of the antenna structure shall be measured from the natural undisturbed ground surface below the center of the base of the antenna support (i.e., tower) to the top of the tower or from the top of the highest antenna or piece of equipment attached thereto, whichever is higher.
  - b. Building mounted antennas. The height of the antenna structure shall be measured from the top of the building roof the antenna is mounted on to the top of the antenna or screening structure, whichever is higher.
  - c. Utility Tower/Pole Mounted Antennas. The height of the antenna structure shall be measured from the base of the utility tower/pole, not the grade of the climbing leg foundation of the structure if the climbing leg foundation of the utility tower/pole structure is not at grade due to exposed footings.
3. Facilities located on properties owned or controlled by the City shall not exceed fifteen (15) feet above the height prescribed for the zone in which the antenna is located.
4. Wireless Communication Facilities shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located.
5. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension that is reasonably necessary for the proper functioning and physical support of the Wireless Communication Facility.
6. All Wireless Communication Facilities must at least meet all current standards and regulations of the FCC as to radio frequency emissions, or any successor agency, and any other agency of the state or federal government with the authority to regulate Wireless Telecommunication Facilities.
7. All Wireless Telecommunication Facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of adjacent properties, and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code. If the City Planner or Planning Commission as the case may be finds that the noise of such facility may have a detrimental effect on an adjacent property, they may require an independent acoustical analysis, at

the applicant's expense, to identify appropriate mitigation measures.

8. Excluding those facilities that are co-located, located within the public rights-of-way, amateur radio antennas, or located on publicly owned or controlled property or utility infrastructure, Wireless Communication Facilities shall be separated from each other as follows, unless the applicant proves by clear and convincing evidence that the separation requirement would prevent the provider from closing a significant gap in its coverage:

Any new ground mounted Wireless Telecommunication Facility located within a quarter mile (1,320) feet of an existing ground mounted facility must be of camouflaged design, regardless of the zone in which it is located.

#### **3914 Safety and Monitoring Standards**

- A. At all times, Wireless Communications Facilities shall comply with the most current regulatory and operational standards including but not limited to radio frequency (RF) radiation exposure standards adopted by the FCC as provided in C.F.R. § 1.1307, et seq. and FCC Office of Engineering & Technology Bulletin 65 and antenna height standards adopted by the Federal Aviation Administration (FAA). The applicant shall maintain the most current information from the FCC regarding allowable RF emissions and all other applicable regulations and standards. The applicant shall file an annual report to the permit file advising the City of any regulatory changes that require modifications to the Wireless Communication Facility and of the measures taken by the applicant to comply with such regulatory changes.

Comment: Section 3914 above does not apply to amateur radio. The FAA antenna height standard refers to antennas at or above 200 feet in height. Further, FCC information regarding emissions is unlikely to change significantly. Since 1957, when I became a radio amateur, the frequencies and power out available to radio amateurs were very similar to those today and those that have changed are either at or less than previously assigned. Radio amateurs should be exempt from this section.

- B. Upon or prior to installation, and prior to activation, of any Wireless Communications Facility the applicant shall submit to the City certification in a form acceptable to the City that the Facility will operate in compliance with all applicable FCC regulations including, but not limited to radio frequency (RF) emissions limitations. Thereafter, upon any proposed

increase of at least ten percent in the effective radiated power or any proposed change in frequency use, the applicant shall submit updated certifications for review by the City. Both the initial and update certifications shall be subject to review and approval by the City Planner. At the City's sole discretion, a qualified independent radio frequency engineer, selected by and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the applicant. Absent any modifications to a Wireless Communications Facility that would cause a change to the effective radiated power or frequency use, the applicant shall submit an annual letter to the Community Development Department certifying that no such changes have been made to the site and that the facility continues to operate within the range allowed by FCC regulations.

Comment: Amateur radio should be exempt from above. The FCC does not certify amateur radio equipment. The effective radiated power is fixed.

- C. A Wireless Communication Facility is to be installed and maintained in compliance with the requirements of the Uniform Building Code, National Electrical Code, noise ordinance and other applicable codes, as well as other restrictions specified in this Article. The Facility operator and the property owner shall be responsible for maintaining the facility in good condition, which shall include but not be limited to regular cleaning, painting, and general upkeep and maintenance of the site.

Comment: Amateur radio will be located on residential premises and therefore should be exempt from above.

- D. Public access to a Wireless Communication Facility shall be restricted. Required security measures may include but not be limited to fencing, screening, and security signage, climbing prevention systems, as deemed appropriate by the City.
- E. Safety lighting or colors, if prescribed by the City or other approving agency (i.e. FAA) may be required for antenna support structures.

Comment: The sentence above is unlikely to apply to amateur radio here in Oceanside, besides this comes under the regulatory purview of the FAA.

### **3915 Duration, Revocation And Discontinuance**

- A. Two year expiration. A permit for a Wireless Communication Facility shall expire two years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
- B. Duration of Permits and Approval.
  - 1. Permits for Wireless Communications Facilities shall be valid for an initial period of ten (10) years from the date of approval unless for a shorter period as authorized by California Government Code section 65964(b), or as specified by the approving body.
  - 2. A permit issued pursuant to this Article may be extended at the discretion of the City Planner for a maximum of three two-year terms by the City Planner upon the applicant proving by clear and convincing evidence that the facility continues to comply with all conditions of approval under which the permit was originally approved.
  - 3. A permit may be revoked pursuant to Article 47 of the Zoning Ordinance.
  - 4. All costs reasonably incurred by the City in verifying compliance and in extending or revoking an approval shall be borne by the applicant and/or permit holder.
- C. Abandonment or Discontinuance of Use. Any Provider who intends to abandon or discontinue the use of any wireless facility shall notify the City of such intention no less than 60 days prior to the final day of use.
- D. Wireless facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
- E. All abandoned facilities shall be physically removed by the Provider no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first. When a wireless facility has been abandoned, but not removed, the City may cause such facilities to be removed and charge all expenses incurred in such removal to the provider.

### **3916 Existing Facilities**

Comment: Section 3916 below does not apply to amateur radio.

All equipment and improvements associated with a Wireless Communication Facility permitted as of the date of the adoption of this Article may continue as they presently exist, but shall constitute a legal nonconforming use to the extent

they do not conform to the standards of this Article. Routine maintenance on existing, operational equipment and facilities at a legal non-conforming Wireless Facility shall not require compliance with this Article. However, replacement of any mainlines, jumpers, antennas, primary or secondary equipment or modification of any kind from a legal non-conforming Wireless Facility or expiration of an existing Conditional Use Permit or Administrative Conditional Use Permit shall require issuance of a permit pursuant to, and in compliance with this Article.

### **3917 Upgrades With New Technology**

Comment: Section 3917 below does not apply to amateur radio.

The City finds that the technology associated with Wireless Communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that telecommunications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, and welfare that telecommunications providers be required to replace older facilities with newer equipment of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, any modifications requested to an existing facility shall permit the City Planner or his designee to review the carrier's existing facility to determine whether requiring newer equipment or applying new screening techniques that reduce visual impacts is appropriate if technically feasible.

### **3918 Green Technology** (optional)

Comment: Section 3918 below does not apply to amateur radio.

The City anticipates that the design of "green" sites (i.e., facilities that utilize alternative energy sources and/or employ technologies that leave a smaller carbon footprint than traditional methods) will be introduced as a design alternative in the near future. New facilities that are proposed using "green" technology may not be capable of strictly complying with this Article. To accommodate these facilities and therefore balance the multiple needs of the community for energy efficiency, adequate telecommunications service and aesthetics, the City may consider factors such as whether the facility has no carbon footprint and/or whether the facility produces power through solar or wind generated means. However, any such proposals shall not eliminate the need to comply with any or all sections of this Article and even "green" facilities shall require a Conditional Use Permit or Administrative Use Permit, as appropriate. Staff shall review each "green" application on a case by case basis and in an appropriate case, may endorse deviations from the specific design requirements

of this Article when staff finds that the benefit of being “green” outweighs the potential negative impacts of not meeting all requirements of this Article. Notwithstanding the endorsement of staff, the Planning Commission shall remain the decision making body for all Conditional Use Permits, including those determined to be “green”, unless the matter is appealed to, or called for review by the City Council, in which case the City Council shall be the decision making body.

### **3919 Distributed Antenna Systems**

Distributed Antenna Systems Installations shall conform to the requirements of this Article.

### **3920 Federal Preemption**

Comment: As stated, Section 3920 below does not apply to amateur radio. The provision noted is for commercial carriers. However, there are other laws both Federal and State, as previously noted, that offer preemption for the unlawful impediments that the proposed Article 39 attempts to impose on the ARS.

Notwithstanding any other provision of this Article to the contrary, if any provision(s) of this Article would give rise to a claim by an applicant that a proposed action by the City would “prohibit or have the effect of prohibiting the provision of personal wireless services” within the meaning of 47 U.S.C. Section 332(c)(7) or would “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service” within the meaning of 47 U.S.C. Section 253 then, at or prior to the public hearing on the application, the applicant shall submit clear and convincing evidence attesting to all specifics of the claim. If such evidence is submitted, the decision-making body shall determine if this is the case, and if so, shall, as much as possible, keep the intent of the ordinance the same while applying the provisions in such a manner as to avoid any violation of federal law. If that is not possible, the decision-making body shall find that the provision(s) cannot be implemented in a manner that does not violate federal law, and shall override the offending provisions to the extent necessary to comply with federal law.

- mounting structure.
- B. When required by the City, 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.
  - C. The Camouflage Design Techniques applied shall result in an installation that is camouflaged and prevents the facility from visually dominating the surrounding area. Camouflage Design Techniques should be used to hide the installation from direct view from surrounding properties.
  - D. Antennas shall not be mounted on above ground water storage tanks.

#### For Monopole Installations

- A. Monopole 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 antenna components and support 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.
- C. In certain conditions, such as locations that are readily visible from residential or open space areas where there is heightened sensitivity for visual impacts and compatibility, the measures described above may not be sufficient to create an effectively camouflaged installation. In these cases, additional measures may be required by the City, including but not limited to enclosing the Wireless Communications Facility 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 the structure.
- D. 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. If Camouflage Design Techniques for monopoles do not adequately hide or prevent direct viewing of the facility, then the permit may be denied.

Co-location Facilities. Co-location installation shall use screening methods similar to those used on the existing Wireless Communication Facility. If the City Planner determines existing screening methods do not conform to the Camouflage Design standards herein, additional screening methods may be required for the

co-located facilities. Use of other appropriate screening methods may be considered through the substantial conformity process.

“Cell on Wheels” (COW): A COW or other similar temporary and mobile Wireless Communications Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary, the appropriate screening methods, considering the temporary nature and length of the permitted use, will be determined through the Conditional Use Permit or administrative review (including but not limited to the Administrative Conditional Use Permit or Substantial Conformity process.)

For Accessory Wireless Equipment: All accessory wireless equipment associated with the operation of any Wireless Communication Facility shall be screened. The following screening techniques shall be considered based on the type of installation:

- A. Accessory wireless equipment for building mounted facility may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally compatible and consistent with the design of the building or structure.
- B. Accessory wireless equipment for freestanding facilities, not mounted on a building, may be visually screened by locating the equipment within a fully enclosed building or in an underground vault. For above ground installations not within an enclosed building, screening shall consist of walls, landscaping, or walls combined with landscaping to effectively screen the facility at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surrounding area.
- C. All accessory wireless equipment shall be placed and mounted in the least visually obtrusive location possible.