

ORDINANCE NO. 21-998

AN ORDINANCE OF THE CITY OF MONTCLAIR CALIFORNIA REPEALING AND REPLACING CHAPTER 11.73 OF THE MONTCLAIR MUNICIPAL CODE TO UPDATE REGULATIONS, STANDARDS, AND CREATE DESIGN GUIDELINES FOR WIRELESS TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTY; ADDING CHAPTER 11.77 TO THE CITY MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE PERMITTING PROCESS; AND AMENDING CHAPTER 11.46 TO EXEMPT CERTAIN WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the City currently regulates permitting of wireless telecommunications facilities on public and private property in the City pursuant to Chapter 11.73 which was adopted in 2002; and

WHEREAS, numerous new federal and state laws and regulations have come into force since that time which place restrictions on local permitting including but not limited to establishing short timelines or "shot clocks" for action on applications, establishing "deemed granted" and other remedies for failing to take final action, and preempting local authority to deny certain types of wireless telecommunications facilities applications; and

WHEREAS, the City Council deems it to be necessary and appropriate to update its standards, regulations, and create design guidelines relating to the location, placement, design, construction, and maintenance of wireless telecommunications facilities on public and private property in the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, on August 16, 2021, the City Council conducted a public hearing for a first reading of the proposed Ordinance No. 21-998 and thereafter set a public hearing for a second reading to take place on September 20, 2021.

WHEREAS, on September 20, 2021, the City Council conducted a public hearing for a second reading of proposed Ordinance No. 21-998.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Montclair City Council as follows:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION II. Chapter 11.73 of the Montclair Municipal Code for the City of Montclair ("Code") shall be repealed, and replaced with the following:

Chapter 11.73 - WIRELESS TELECOMMUNICATIONS FACILITIES

11.73.010 - Purpose and intent.

The purpose and intent of this Chapter is to establish standards for the review, siting and development of wireless telecommunications facilities on public and private property throughout the City. A primary intent is to ensure that wireless networks are implemented with the fewest possible facilities, in the least visible manner, and with the least disruptive impact on the City's neighborhoods. This shall be accomplished through allowing collocation of multiple wireless providers at approved locations, requiring creative, stealth facility designs in zones where facilities are allowed, and prohibiting facilities within, and immediately adjacent to, certain limited City zoning districts where such facilities on public and private property would be highly incompatible with the predominant existing uses in those zoning districts. The regulations set forth in this Chapter are intended to protect and promote the public health, safety and general welfare, and to promote and enhance the aesthetic qualities of the community as set forth in the goals, objectives, and policies of the General Plan, while concurrently

allowing for the orderly and efficient development of a wireless telecommunications infrastructure in accordance with state and federal law and Federal Communications Commission regulations.

11.73.020 – Applicability.

This Chapter applies to all wireless telecommunications facilities existing and proposed to be located within the corporate boundary of the City of Montclair, except wireless telecommunications facilities in the public right-of-way that are subject to Chapter 9.105 and antennas and satellite dish antennas that are subject to Chapter 11.46 of the City Code.

11.73.030 – Exemptions.

The following facilities are exempt from the requirements of this Chapter 11.73, and may be governed by other laws:

- A. Amateur radio antennas:
 1. That are completely enclosed within a permitted building; or
 2. That consist of a single wire not exceeding one-fourth inch in diameter. Such wire antennas may be located in setback areas provided the antenna does not extend above the maximum building height in the district.
 3. That consist of a single ground-mounted vertical pole or whip antenna not exceeding the maximum building height allowable for the zone measured from finish grade at the base of the antenna, and not located in any required setback area. Support structures or masts for pole or whip antennas shall conform to standards set out in the current California Building Code. A building permit may be required for the support structure or mast.
- B. “Like kind” equipment meaning the replacement or changing of equipment in an existing shroud, cabinet, vault, or secured ground lease area, which was approved by an entitlement and/or permit issued by the City that is substantially similar in appearance, size, dimensions, weight, and RF emissions to the then-existing and approved equipment. This exemption does not apply to generators.
- C. The following temporary facilities that will be placed for less than seven consecutive days, provided any necessary building permit or other approval is obtained and the landowner’s written consent is provided to the Director prior to installation:
 1. Facilities installed and operated for large-scale events; and
 2. Facilities needed for coverage during the temporary relocation of an existing and already-approved facility.

11.73.040 – Nonconforming wireless telecommunications facilities.

- A. Legal Nonconforming Facility. Any facility that is lawfully constructed, erected, or approved prior to the effective date of Ordinance 21-998, in compliance with applicable laws, and which facility does not conform to the requirements of this chapter shall be accepted and allowed as a legal nonconforming facility. Legal nonconforming wireless telecommunications facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time that the application was granted, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal nonconforming facility which fails to comply with applicable laws, ordinances, regulations, or conditions of approval may be required to conform to the provisions of this chapter.
- B. Illegal Nonconforming Facility. Any facility constructed or erected prior to the effective date of Ordinance 21-998 in violation of applicable laws, ordinances, or regulations shall be considered an Illegal Nonconforming Facility and shall be abated as a public nuisance pursuant to Chapters 1.12 and 7.24.020.H of the Montclair Municipal Code

11.73.050 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Administrative Permit means a permit obtained pursuant to Chapter 11.77.

Alternative tower structure means clock or bell towers, steeples, spires, monoliths, light poles, artificial trees and similar alternative design mounting structures that camouflage or conceal the presence of an antenna or antenna arrays.

Antenna means any exterior transmitting or receiving device mounted on a tower, building structure, pole or alternative tower structure and used in communication that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications signals or other communications signals.

Antenna array means a set of one or more antennas.

Applicant means the person filing an application for placement or modification of a wireless telecommunications facility on public or private property in the City of Montclair.

Building-mounted – means mounted to the side or integrated into the façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

CUP means Conditional Use Permit.

City shall mean the City of Montclair, California, a municipal corporation.

Code means Montclair Municipal Code.

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

Design Standards means those detailed design standards, specifications, and examples adopted by the City Council related to the design and installation of wireless telecommunications facilities.

Director means the Director of Community of Development of the City of Montclair or his or her designee.

Eligible Facilities Request means the same as in 47 C.F.R. § 1.6100(b)(3), or any successor provision.

FCC means the Federal Communications Commission or its lawful successor.

Fall Zone – means the area on the ground within a prescribed radius from the base of a wireless telecommunications facility. The fall zone is the area within which there is a potential hazard from falling debris, collapsing material, or the collapse of the tower itself.

Freestanding telecommunications tower or structure – means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, such as a monopole tower.

Height means, when referring to a tower or other structure, the vertical distance measured from the finished grade level to the highest point on the tower or other structure, even if said highest point is an antenna. The finished grade shall not be artificially or unnecessarily raised to achieve a taller height for the tower or structure.

Macro cell facility (or site) means a large wireless communication facility that provides radio frequency coverage for a personal wireless service. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers. For purposes of this chapter, a macrocell is anything other than a small cell, microcell or in-strand antenna. In addition to the requirements found in this chapter, a macrocell shall comply with the applicable zoning and use requirements as a "wireless telecommunications facility or wireless facility".

Modification means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in

size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

Monopalm means a stealth tower structure resembling a palm tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

Monopine means a stealth tower structure resembling a pine tree constructed and designed for the sole purpose of supporting and concealing a wireless telecommunications antenna or antenna array.

Monopole means a structure comprised of a single spire for the sole purpose of supporting a wireless telecommunications antenna or antenna array.

Roof-mounted means an antenna or antenna array directly attached or affixed to the roof of an existing building, tower or structure other than a lattice tower, monopole, monopalm or monopine.

Stealth, or a stealth facility, means a facility that is designed to look like something other than a wireless tower, base station or facility.

Temporary Facility means a wireless facility intended or used to provide wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a single location or following a duly proclaimed local or state emergency as defined in California Government Code Section 8558 requiring additional service capabilities. Temporary facilities include without limitation, cells on wheels (COW), sites on wheels (SOW), cells on light trucks (COLTs), or other similar wireless facilities: (1) that will be in place for no more than six months (or such other longer time as the City may allow in light of the event or emergency); (2) for which required notice is provided to the FAA; (3) that do not require marking or lighting under FAA regulations; (4) that will be less than 200 feet in height; and (5) that will either involve no excavation or involve excavation only as required to safely anchor the facility, where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet.

Wireless telecommunications facility (or wireless facility) means antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower, support structure(s), and base station(s). Accessory equipment associated with the installation of a wireless telecommunications facility includes, but is not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers, service roads and other similar improvements.

11.73.060 – Permit required.

An Administrative Permit or Conditional Use Permit (CUP) in compliance with the design guidelines, as applicable, processed in accordance with Chapter 11.77 or Chapter 11.78 of the Montclair Municipal Code shall be required for all wireless telecommunications facilities on public and private property within the City that are not exempt pursuant to Section 11.73.030. A CUP is required for installations involving a new freestanding support structure and for certain collocations that the Director has deemed complex based on the nature of the installation. All other wireless installations on public and private property require an Administration Permit.

Building Permits. All improvements associated with a new wireless telecommunications facility and all modifications to existing facilities, shall require City review and the issuance of building permits.

11.73.070 – Primary land use required.

Wireless telecommunications facility shall be permitted only as an accessory use on real property that is presently developed with a legal, conforming primary land use. Applications for facilities on undeveloped parcels shall not be considered unless the application is filed concurrently with an application for development of a conforming land use on the parcel. A variance application requesting that development of the primary land use on the parcel be permitted to deviate from any of the City's development standards solely to accommodate a wireless telecommunications facility on the same parcel shall not be considered.

11.73.080 – Application requirements.

In addition to complying with the standard application submittal requirements and design guidelines for an Administrative Permit or CUP as provided for in Chapters 11.77, 11.78, and 11.73 of the Montclair Municipal Code, the applicant shall also provide all information required on a form published, and from time to time updated, by the Director.

11.73.090 – Permitted locations.

Wireless telecommunications facilities on public and private property may be located within the following zoning districts, subject to the approval of a CUP and compliance with the design standards of Section 11.73.110:

A. Residential Zones

1. R-1 Zone (Single-Family Residential) – On properties two acres in size or larger where the primary use is not residential such as a religious institution, public utility facility, public park, or other similar non-residential use as determined by the Community Development Director. Qualifying properties may be comprised of one or more abutting parcels under the same ownership.
2. R-3 Zone (Multiple-Family Residential) – When integrated into the existing architectural framework of a building or structure – such as the backside of parapet walls, within towers or wall setbacks, in roof attic space, etc. – so that the presence of an antenna or antenna arrays are concealed. Ground mounted support equipment shall not be located in required parking spaces and/or required setbacks. Freestanding wireless telecommunications facilities shall be not be permitted

B. Non-Residential Zones

1. AP (Administrative Professional Zone);
2. C-3 (General Commercial Zone);
3. MIP (Manufacturing Industrial Zone);
4. M-1 (Limited Manufacturing Zone);
5. M-2 (General Manufacturing Zone).

C. Specific Plans

1. North Montclair Downtown Specific Plan (NMDSP)
2. Montclair Place District Specific Plan (MPDSP)
3. Arrow Highway Mixed-Use District (AHMUD)
4. Auto Mall," "Business Park," "Commercial," "Commercial/Office" and "Industrial" zones of the Holt Boulevard Specific Plan (HBSP).

11.73.100– Prohibited locations.

Wireless telecommunications facilities on public and private property shall be expressly prohibited within the following zoning district designations:

- A. R-1 Zone – where the primary use of the site is residential and the site does not meet the minimum parcel size requirement as identified in Section 11.73.090.A.1;
- B. R-2 (Two-Family Residential);
- C. C-2 (Restricted Commercial).

11.73.110 – Design and development standards.

Design and Development standards for Wireless Telecommunications Facilities on Public and Private Property are provided as a separate document which may be updated from time-to-time by the Community Development Director.

11.73.120 – Monitoring and maintenance.

The owner of the wireless telecommunications facility shall routinely monitor the site to ensure the facility is maintained in good condition at all times in accordance with all approved plans and conditions of approval. Such maintenance shall include, but shall not be limited to, routine inspections to verify the facility and its components are structurally sound, is free of: general dirt and grease; chipped, faded, peeling or cracked

paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas; and, the health and operation of associated landscaping and irrigation.

The owner of the facility shall also be responsible for maintaining the integrity and appearance of their facility making sure that any deficiencies (e.g., missing or defective parts, faux branches and foliage, stealth components, etc.) are routinely replaced in a timely manner with matching material and functioning parts, with or without notification from the City.

Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.

11.73.130 – Special standards for temporary facilities.

- A. The proposed temporary facility must comply with all applicable laws and regulations, and submit proof of compliance, as proposed for use, with FCC regulations governing radio frequency emissions.
- B. The proposed facility will be placed and protected to prevent hazard to the public and property, and so as not to unreasonably interfere with pedestrian vehicular traffic, and all ADA space and path of travel requirements.
- C. The proposed facility must comply with all conditions for a temporary wireless facility, and there must be an appropriate plan for removal of the facility and restoration of property affected by it.
- D. The permit is sought for the minimum period required, and no greater than the maximum period permitted by the City.
- E. Any permit issued shall identify where the temporary wireless facility will be placed, and the period for which it may remain in place.

11.73.140 – Required findings for wireless telecommunications facilities.

- A. Other than eligible facilities requests and temporary wireless facilities, the Director, City Manager, or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following: These are in addition to any applicable findings in Title 11 of the Montclair Municipal Code associated with a Conditional Use Permit, when applicable.
 - 1. There is adequate space on the property for the wireless telecommunications facility without conflicting with existing buildings or other improvements on the property or reducing required parking or landscaping;
 - 2. The design and placement of the wireless telecommunications facility complies with all applicable design and location standards, and will not adversely impact the use of the property, buildings and structures located on the property, or the surrounding area or neighborhood;
 - 3. The wireless telecommunications facility as proposed is consistent with the provisions of this Chapter and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code; and
 - 4. The wireless telecommunications facility meets applicable requirements and standards of state and federal law.
- B. For eligible facilities requests, the Director or Planning Commission, as the case may be, shall approve the installation or modification of a wireless telecommunications facilities if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - 1. The application qualifies as an eligible facilities requests subject to this Chapter.
 - 2. The proposed facility will comply with all generally-applicable laws.
- C. For temporary facilities not exempt pursuant to Section 11.73.030(C), the Director, or Planning Commission, as the case may be, shall approve an

application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

1. The facility qualifies as a temporary facility;
2. There is an adequate need for the facility (e.g., wireless facility relocation or large-scale event);
3. The facility is not detrimental to the public health, safety, and welfare;
4. The facility complies with all applicable design and location standards; and
5. The facility meets all applicable requirements of state and federal law.

11.73.150 – Exceptions.

- A. The approving authority may grant an exception to any of the requirements of this Chapter and/or the applicable design and location standards if it determines that the applicant has established that denial of an application would:
 1. Within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services; or
 2. Otherwise violate applicable laws or regulations; or
 3. Require a technically infeasible design or installation of a wireless telecommunications facility.
- B. If that determination is made, the requirements of this Chapter and/or the applicable design and location standards may be waived, but only to the minimum extent required to avoid the prohibition, violation, or technically infeasible design or installation.

11.73.160 – Conditions of approval.

- A. Conditions of approval shall be imposed by the approving authority on all permits granted pursuant to this Chapter to ensure compliance with the intent of Title 11 of the City Code, the required standards and findings, and the protection of the public health, safety, general welfare, and aesthetics.
- B. In addition to any supplemental conditions imposed by the approving authority, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:
 1. This permit shall be valid for a period of 10 years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of 10 years from the date of issuance, this permit shall automatically expire, unless an extension or renewal has been granted. A person holding this permit must either (1) remove the facility within 30 days following this permit's expiration (provided that removal of any support structure owned by City, a utility, or another entity need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least 90 days prior to expiration, submit an application to renew this permit, which application must, among all other requirements, demonstrate that the impact of the wireless telecommunications facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
 2. Timing of Installation. The installation and construction authorized by this permit shall begin within one (1) year after its approval, or such approval shall expire without further action by the City. The installation and construction authorized by this permit shall conclude, including any necessary post-installation repairs and/or restoration to the installation site, within 30 days following the day construction commenced. If the wireless facility is to be installed adjacent to residences, construction and maintenance of the facility shall be limited to the hours as per City of Montclair Municipal Code Section 6.12.060.D. Emergency repairs of the wireless facility may occur at any time.
 3. The operation of the approved facility shall commence no later than one month after the completion of installation, or this permit will expire without further action by the City.

4. The Permittee shall submit an as-built drawing within 90 days after installation of the facility, in a format acceptable to the City.
5. The wireless telecommunications facility shall be constructed in substantial compliance with plans reviewed and approved by the Director.
6. No advertising, signs or lighting shall be incorporated or attached to the antenna array or support facilities, except as required by the City's Building Division or federal regulations.
7. All electrical and utility connections serving the facility shall be placed underground in accordance with the requirements of the Montclair Municipal Code.
8. A back-up generator authorized by this permit must comply with City Code Chapter 6.12 - "Noise Control".
9. The Permittee shall submit to the City certification of continued use of the approved facility on an annual basis at the time of business license renewal for as long as the facility remains in operation. The certification shall indicate that the facility is operating as approved and that the facility complies with the most current FCC safety standards. Facilities that are no longer in operation shall be completely removed within 90 days after the date cessation of operation.
10. If no annual certification is provided, the permit for the facility may be revoked by the Director. Prior to revoking a permit, the Director shall provide the owners of record written notice of their failure to provide the annual certification and an opportunity for a hearing.
11. Written notice of change of ownership and contact information of the facility shall be provided in writing to the Director within 30 days of said change. Failure to provide the information may cause for grounds to revoke the entitlements by the Director.
12. Radio Frequency Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
13. All future changes and modifications to an approved facility shall require prior review and approval by Chapter 11.73.
14. Prior to construction of the facility, the Permittee shall:
 - a. Obtain a building permit that complies with all requirements of the Building and Engineering Divisions and the Montclair Fire Department.
 - b. Remit to the City a performance bond, or other form or surety acceptable to the City in an amount to be determined by the Director for the purpose of removing the subject facility and all associated support equipment in the event the facility becomes abandoned, this permit is revoked by the Director, or the Permittee does not or is unable to remove the facility.
 - c. Submit a copy of the lease with the property owner. If the lease is extended or terminated, notice and evidence thereof shall be provided to the Director. Upon termination or expiration of the lease, this permit for the facility shall become null and void and the facility shall be completely removed within 90 days.
15. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.

16. If, as a result of the operation of the subject facility, existing or future residential, commercial or industrial properties near the site experience interference difficulties with electronic equipment (such as radios, televisions, telephones, home computers, etc.), or if public safety personnel experience interference with communications systems, the Permittee shall be solely and fully responsible to correct any and all problems upon proof of such interference.
17. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and shall remain free of: general dirt and grease; chipped, faded, peeling or cracked paint; trash, debris, litter, graffiti and other forms of vandalism; cracks, dents, blemishes and discolorations; visible rust or corrosion on any unpainted metal areas. Any damage from any cause shall be repaired by the Permittee within 30 days of notice. Weathered, faded, or missing parts/materials used to disguise/camouflage the facility shall be maintained and/or replaced by the Permittee within 30 days of notice. All graffiti on facilities must be removed at the sole expense of the Permittee within 72 hours after notification from the City. All other forms of vandalism and damage shall be removed and/or repaired within 72 hours of notice by the City.
18. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The Permittee shall contact the City to schedule an appointment for such inspections. Further, after the initial inspection, the City or its designee may enter onto the facility area to inspect the facility upon 24 hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the Permittee prior to disabling or removing any facility elements, but in any case shall notify Permittee within 24 hours of doing so.
19. The Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. The FCC Antenna Structure Registration site number, City permit number, primary leaseholder's, and facility manager's contact information shall be kept current and prominently displayed on the facility where it can be easily viewed from ground level.
20. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
21. No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to this permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
22. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable

time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.

23. The Permittee shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The Permittee shall reimburse the City, its agents, officers, or employees for any court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve Permittee of its obligations under this condition.
24. In the event that the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke this permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

11.73.170 – Eligible facilities requests.

- A. Eligible Facilities Requests. In addition to the conditions provided in Section 11.73.150 of this Chapter (with the exception of 11.73.150(b) which shall not apply to eligible facilities requests) and any supplemental conditions imposed by the Director, all permits for eligible facilities requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
 1. Permit subject to conditions of underlying permit. Any permit or wireless telecommunications facility authorization granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit;
 2. No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
 3. No waiver of standing. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the
 4. Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

SECTION III. Title 11, Division IV of the Code shall be amended to add new Chapter 11.77, as follows:

Chapter 11.77 – ADMINISTRATIVE PERMIT

11.77.010 – Purpose.

This chapter is intended to allow for administrative review and decisions for: (1) specific projects involving less complex installations, smaller installations, or less new construction; or (2) applications for which there is no discretion.

11.77.020 – Scope.

The following permit and application types shall undergo an administrative review pursuant to this Chapter rather than requiring a Conditional Use Permit pursuant to Chapter 11.78:

- A. Applications to install or modify wireless facilities on public or private property; except for proposed installations requiring new support structures and,
- B. At the Director's discretion, certain collocations based on their complexity.

11.77.030 – Review authority.

The Director of Community Development (Director), or its designee, is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

- A. Interpret the provisions of this Chapter and related chapters in Title XI – Zoning and Development;
- B. Develop forms and procedures for submission of applications consistent with this Chapter;
- C. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
- D. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- E. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- F. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by proposed work or project;
- G. Determine whether to approve, approve subject to conditions, or deny an application; and
- H. Take such other steps as may be required to timely act upon applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

11.77.040 – Appeal.

- A. Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the Director's decision to the City Manager, who may decide the issues de novo, and whose written decision will be the final decision of the City.
- B. Where the Director grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Manager.
- C. All appeals must be filed within two (2) business days of the issuance of the written decision of the Director, unless the Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

11.77.050 – Applications.

- A. Submissions. Applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to notices of incompleteness and requests for information regarding an application to: Director of Community Development, at City Hall.
- B. Content. An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time. If no form has been approved, applications must contain all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed project will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare (including proof of compliance with the FCC's radio frequency emissions standards) and must specify whether the applicant believes state or federal law requires action on the application within a specified time period. If applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim.

- C. Fees. Application fee(s) shall be required to be submitted with any application for an administrative permit. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for an administrative permit unless paid as a refundable deposit.
- D. Waivers. Requests for waivers from any application requirement shall be made in writing to the Director or his or her designee. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the project or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case- by-case basis, and (2) narrowly-tailored to minimize deviation from the application requirements.

11.77.060 – Findings, decisions, and consultants.

- A. The findings required for approval can be found in the respective sections of the Code for each application or project type.
- B. Decisions. Decisions on an application shall be in writing and include the reasons for the decision.
- C. Independent Consultants. The Director or City Manager, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in relevant fields in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application.

11.77.070– Conditions of approval.

- A. The Director or City Manager, as the case may be, may impose conditions of approval on all permits granted pursuant to this Chapter.

11.77.080 – Breach; termination of permit.

- A. An administrative permit may be revoked for failure to comply with the conditions of the permit and applicable law. Upon revocation, any construction or installations made under the permit must be removed; provided that removal of a support structure owned by a City, a utility, or another entity authorized to maintain the support structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.
- B. For projects or installations without a permit. Any work or installations performed without an administrative permit (except for those exempted by this Chapter or respective chapters for a specific project type) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the project or installation.
- C. Municipal Infraction. Any violation of this Chapter will be subject to the penalties set forth in Chapter 1.12 of the City Code.

SECTION IV. Section 11.46.010 of the Code shall be amended to add the following:

This Chapter 11.46 does not apply to wireless telecommunications facilities that are subject to the regulations in Chapter 11.73 of the Code.

SECTION V. Environmental Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the

environment, directly or indirectly. The Ordinance establishes an application process for permits to install or modify wireless telecommunications facilities on new and existing structures on public and private property in the City of Montclair. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will – at that time – conduct preliminary review of the application in accordance with CEQA.

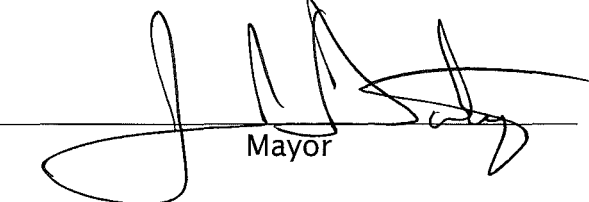
Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, §15061(b)(3).) That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time.

Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either: (1) State CEQA Guidelines section 15302 (replacement or reconstruction) because the wireless telecommunications facility installations regulated by the Ordinance involve the replacement or modification of existing structures and facilities on private and public property in the City of Montclair where the replacement support structure will be located on the same site as the structure that it is replacing and will serve substantially the same purpose and capacity as the structure that it is replacing; and/or (2) State CEQA Guidelines section 15303 (new construction or conversion of small structures) because the wireless telecommunications facility installations regulated by the Ordinance involve new structures and/or the replacement or modification of existing structures and consist of: (a) the construction and siting of limited numbers of wireless telecommunications facilities; (b) the installation of associated equipment in ground-mounted cabinets or enclosures not exceeding 10,000 square feet in floor area on sites zoned for such use, not involving the use of significant amounts of hazardous substances; and (3) limited utility extensions to serve such facilities on public and private property where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. None of the exceptions to the Class 2 or 3 Categorical Exemptions found in State CEQA Guidelines section 15300.2 apply because the Ordinance does not present any unusual circumstances; would not damage scenic resources, including any resources in the area of a Scenic Highway; would not be utilized on a hazardous waste site; and would not impact historic resources of any kind. The City Council, therefore, directs that a Notice of Exemption be filed with the San Bernardino County Clerk within five working days of the passage and adoption of the Ordinance.

SECTION VI. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION VII. Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this 20th day of September, 2021.



Mayor

ATTEST:


City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 21-996 of said City, which was introduced at a regular meeting of the City Council held on the 16th day of August, 2021, and finally passed not less than five (5) days thereafter on the 20th day of September, 2021, by the following vote, to-wit:

AYES: Lopez, Martinez, Johnson, Ruh, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None



Andrea M. Myrick
City Clerk