

**ORDINANCE NO. 1870-2012**

**AN ORDINANCE OF THE CITY OF BURLINGAME ESTABLISHING ZONING REGULATIONS AND PERFORMANCE STANDARDS FOR THE INSTALLATION, PLACEMENT AND CONSTRUCTION OF WIRELESS COMMUNICATIONS FACILITIES WITHIN THE CITY OF BURLINGAME**

**WHEREAS**, in October of 2010, the City's Public Works Department received encroachment permit applications from two telecommunications companies for the installation of wireless communication antenna in the public right-of-way, to be placed on the top of utility poles and on city light poles in some areas of the City, as well as related facilities; there were and are no City regulations addressing the placement of cell phone antennae in the public right-of-way; and

**WHEREAS**, the only City regulation regarding any form of antenna is in the building provisions of the Municipal Code, Chapter 18.18; but this ordinance only addresses satellite dishes, "ham" radio towers and "other antennae" which are mounted on the roof of a structure; these regulations are inapplicable to the public right-of-way; and

**WHEREAS**, in order to provide some guidance for the placement of wireless antenna in the public right of way, the Public Works Department developed administrative procedures for the grant of wireless communication antenna encroachment permits; however, these procedures are limited and do not provide a comprehensive regulatory approach to the placement of wireless communications facilities within the City; and

**WHEREAS**, upon receipt of notification of the proposed facilities, a great number of residents, by letter, telephone and email, vehemently raised objections and concerns regarding the placement of the wireless communications antenna near their residences, including adverse aesthetic impacts, negative health effects of radio frequency emissions, impacts on property values and lack of necessity for the facilities; and

**WHEREAS**, the City of Burlingame draws substantial value from its residential neighborhoods, which, through their aesthetics and attraction to newcomers from around the state and the country lead directly to increasing property taxes for the City, County and State of California due to the actions of Proposition 13; and

**WHEREAS**, at a public hearing held before the City's Planning Commission on July 25, 2011, numerous residents appeared to ask the Commission to protect their neighborhoods, to state their opposition to the placement of wireless communications antenna in residential districts, to request that the City enact regulations through an Ordinance to govern the deployment of such facilities; and

**WHEREAS**, the City of Burlingame also has a municipal interest in encouraging wide deployment of better and faster communications systems for its citizens and businesses; and

**WHEREAS**, on October 5, 2011, the City Council conducted a study session regarding the regulation and placement of wireless communications facilities within the City and at its meeting of October 17, 2011, the City Council established a subcommittee of two council members and two planning commissioners and charged it to work with a working group composed of staff, citizens and industry representatives with the objective of drafting a comprehensive wireless communications ordinance for the City of Burlingame; and

**WHEREAS**, the proliferation and siting of wireless communications antenna, towers and other facilities may cause residents concern with regard to potentially adverse aesthetic impacts in the City's residential neighborhoods and public rights-of-way; and,

**WHEREAS**, delays and uncertainty of the permit process due to lack of clear siting and development standards may operate as a limitation upon the wireless communications companies seeking to provide wireless communications services to the citizens of the City; and,

**WHEREAS**, the City seeks to act thoughtfully, carefully and deliberately in a field with rapidly evolving technology, to establish policy, standards, and procedures related to the siting of wireless communications facilities in a fair, equitable and rational manner, consistent with the requirements of the federal Telecommunications Act of 1996 California State law regarding utilities in the public right-of-way and all other applicable laws and regulations;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES ORDAIN AS FOLLOWS:**

**Division 1. Findings**

The City Council determines and finds that all of the facts contained in the recitals above, all of the facts contained in the staff reports to the Planning Commission and the City Council and all of the facts presented at the public hearings before the Planning Commission and the City Council, are true and correct and based upon these facts, the Council determines that the public safety and welfare of the citizens of Burlingame require the adoption of this ordinance, that this ordinance shall further the goals and objectives of the Burlingame General Plan, the Specific Area Plans and the Burlingame Zoning Ordinance

**Division 2. The Wireless Communications Facilities Ordinance**

Chapter 25.77, entitled "Wireless Communications Facilities" is hereby added to the Burlingame Municipal Code to read as follows:

**25.77.010 Purpose**

Based upon the principles of the Burlingame General Plan and the Specific Area Plans, the purpose of this chapter is to maintain and more importantly, to facilitate modernization of Burlingame's communications infrastructure in a manner that improves the quality of the City's environment, the pleasant aesthetics of the City's neighborhoods, the City's architectural traditions dating to the early 20th century and the visual quality in the non-residential areas of the City. More specifically, the purpose of this chapter is to regulate, as allowed by state and federal law and regulations, the location of communications facilities in the City of Burlingame in a manner that recognizes the community benefits of communications technology, which provides clear guidance to the communications industry but also recognizes the strong need to preserve the City's aesthetic traditions.

The objectives of this Chapter include

A. Promoting wholesome, attractive, harmonious and economic use of property, building construction, civic service, activities and operations in conformity with and preserving the overall aesthetics of City neighborhoods.

- B. Ensuring the character of City neighborhoods and preserving the century old architectural traditions of Burlingame.
- C. Reducing and wherever possible camouflaging the visual effects of communications facilities throughout the City, whether on private property or in the public right-of-way.
- D. Encouraging the installation of communications facilities at locations where other such facilities already exist without aesthetically overwhelming those locations with additional facilities.
- E. Encouraging the installation of such facilities in locations to minimize potential adverse aesthetic impacts.
- F. Creating a transparent and open process by which City staff, citizens, and communications providers can collaboratively achieve solutions to the placement of telecommunications facilities to achieve these goals.
- G. Encouraging industry to adopt best practices in all deployments, to utilize designs to minimize visual impacts, to share with the City future plans for deployments so that the cumulative impacts can be understood and planned for, and to fairly compensate the City for the reasonable staff time and costs incurred as a result of the applicant's request to use public assets such as rights-of-way and utility poles.

**25.77.020 Definitions**

For the purpose of this chapter, certain words and terms are hereby defined. Words used in the singular number shall include the plural and the plural the singular; unless more specifically defined, the word "building" is interchangeable with the word "structure," the word "shall" is mandatory and not discretionary. All equipment not specifically described herein shall be regulated in conformity with that equipment described herein which is most substantially similar, from a functionality standpoint. Reference to "facility" is interchangeable with "wireless communications facility" unless otherwise noted.

- A. "Antenna" shall mean a device used in wireless communications which transmits or receives radio or any other sort of electronic type of signal, which may include electromagnetic waves.
- B. "Applicant" or "Provider" shall mean the person or entity applying for a permit to install wireless communications facilities.
- C. "Co-location" shall mean the placement or installation of wireless communications facilities, including antennas, and related equipment, on, in, or immediately adjacent to, an already existing wireless communications facility which has been designed as a co-location facility, has been granted a use permit pursuant to this Chapter
- D. "Cessation of operation" shall mean that a facility, for whatever reason, has not functioned for a period of twelve months.
- E. "Burlingame Downtown Districts" shall mean the downtown Burlingame Avenue Specific Plan Area and the Broadway Avenue commercial district as delineated in the City of Burlingame zoning map.

- F. "Equipment facility" shall mean a cabinet or structure used to house equipment associated with wireless communication antennas.
- G. "Facade-mounted antennas" shall mean any type of wireless communications facility in which antennas are mounted on the wall of a structure.
- H "Microwave antenna" shall mean a bowl-shaped antenna used to link communication sites together by wireless transmission of voice or data in a specific directional pattern.
- I. "Monopole" shall mean a free-standing pole like a slim line, flagpole, or similar structure.
- K. "Owner" shall mean the person or entity that has legal ownership or control over the tangible wireless communications facilities.
- L. "Lattice Tower" shall mean an open lattice type structure; it does not include electric power transmission towers.
- M. "Electric power transmission tower" shall mean those towers used by electric utilities for transmitting electric power; they can be either lattice or monopoles.
- N. "Non-residential Zoning Districts" shall mean those zoning districts within the City of Burlingame which are neither Residential Zoning Districts nor Burlingame Downtown Districts.
- O. "Radio frequency radiation (RFR)" shall mean electromagnetic radiation in the portion of the spectrum from three (3) kHz (Kilohertz) to three-hundred (300) GHz (gigahertz).
- P. "Reasonably feasible" or "feasible" shall mean that a requirement is not impossible, not costly out of proportion with the Facility, not impractical or beyond industry capabilities.
- Q. "Roof-mounted" shall mean any type of facility in which antennas are mounted on the roof, parapet or similar feature of a structure and extends past the roofline of the building.
- R. "Residential Zoning District" shall mean the R-1, R-2, R-3 and R-4 residential zoning districts as delineated on the City of Burlingame zoning map.
- S. "Stealth Design" shall mean any design which, utilizing the industry's best effort and most current technology, as of the time of the current application, screens from view, camouflages, integrates a facility into the architectural features of a building or structure or in any other manner reduces to insignificant the visual impact of wireless communication facility components including but not limited to, antenna, transmitters, relays, receivers, equipment cabinets or any other portion or component of a Wireless Communication Facility.
- T. "Stealth Structures" shall mean a structure which utilizes Stealth Design to screen from view, camouflage, integrate into the architectural features of a building or otherwise eliminates or reduces to insignificant the visual impact of wireless communication facilities. Such structures include, but are not limited to, tree designs, rooftop structures, simulations of building features, designs matching adjacent architectural and vegetation features, antennas encased within poles or radomes and similar structures which can eliminate or reduce the aesthetic impact of the Facility.
- U. "Support Structure" shall mean a ground placed structure in which or to which wireless communications facilities are attached or housed.

V. "Wireless Communications Facilities" and "Facilities" shall mean commercial transmitting, relaying and/or receiving antennas, antenna support structures and/or ancillary facilities, including, but not limited to equipment cabinets, Facility components and similar structures or equipment and/or overhead service/transmission lines used for the purpose of transmitting, relaying and/or transmitting and/or receiving data, voice and/or paging services. Communications facilities shall also include those intended to be operated for a limited time such as facilities mounted on a mobile vehicle or trailer. For purposes of this chapter, communications facilities do not include those facilities specifically protected pursuant to Section 207 of the Telecommunications Act of 1996. In the instance of a distributed antenna system (DAS) or functional equivalent (e.g., distribution of the signal via multiple distribution points), the Wireless Communication Facilities shall mean all distributed points and connecting cables and support equipment for the DAS system.

#### **25.77.030 Applicability**

This chapter shall apply to all Wireless Communication Facilities which transmit and/or receive electromagnetic signals in order to provide services, including, but not limited to, personal communications services (such as mobile telephone services, internet services, location and monitoring services, data, e-mail, texting, streaming video and audio and paging) fixed microwave services, and mobile data services. This chapter shall apply to the entire area within the City of Burlingame City limits including all zoning districts, all public property and all public right-of-way. This chapter shall not be applied or interpreted, to prohibit or to have the effect of prohibiting wireless communications services, to regulate the placement, construction or modification of Wireless Communications Facilities on the sole basis of the environmental effects of radio frequency emissions, provided that such facilities comply with Federal Communications Commission ("FCC") regulations, or to unreasonably discriminate among providers of functionally equivalent wireless communications services.

This chapter shall not apply to

- A. Wireless Communications Facilities which are located completely enclosed within a permitted structure are incidental to a permitted use in that structure and are located within a Non-residential Zoning District.
- B. Hand-held mobile, marine, and portable radio transmitters and/or receivers which are not affixed to land or a structure.
- C. Wireless Communications Facilities required on a temporary basis during an officially declared emergency by local, state or federal authority.
- D. Traditional terrestrial radio and television mobile broadcast facilities.

Where conflict occurs between the provisions of this chapter and any other City codes, ordinances, resolutions, guidelines or regulations, the more restrictive provision shall control unless otherwise specified or mandated by law.

**25.77.040 Non-conforming facilities**

Any Wireless Communication Facility that was lawfully erected prior to the effective date of the ordinance codified in this chapter shall not be required to meet the requirements of this chapter. The nonconforming Wireless Communications Facilities shall be allowed to continue as they exist as of the effective date of this ordinance, but will be considered as lawful nonconforming legal uses and shall be subject to the restrictions of Chapter 25.50 of this Code. The foregoing notwithstanding, non-conforming Wireless Communication Facilities shall be required to comply with the requirements of this chapter if any non-conforming Facility or component of a non-conforming Facility is modified as defined in section 25.77.165.

**25.77.050 Permit Requirement**

A. Permit Requirement for location of wireless communications facilities.

No Wireless Communication Facility shall be constructed, erected or placed anywhere within the City without first obtaining a permit from the Planning Commission or the Community Development Director pursuant to the requirements of this chapter and without obtaining any permits required under any other applicable state federal or local laws or regulations, unless exempt pursuant to section 25.77.030. Applications for approval of Wireless Communication Facility shall be submitted to and processed by the Planning Division of the City's Community Development Department and shall be reviewed and either approved, modified or denied by the Community Development Director or the Planning Commission, depending upon the application's classification as defined in this chapter. If the Community Development Director cannot support the findings of this chapter based upon the proposed project, then the Director may refer the application that would otherwise be subject to an administrative use permit, for review and approval by the Planning Commission.

B. Administrative Use Permit

An administrative use permit for Wireless Communications Facilities may be granted by the Community Development Director if the proposed Facility:

1. will be placed entirely within a non-residential zoning district, not within the Burlingame downtown districts and not within five hundred (500) feet from any residential zoning district or the Burlingame downtown districts.

2. will be co-located on, in or immediately adjacent to an existing Wireless Communication Facility.

C. Conditional Use Permit

Except for Facilities permitted under sub-section B, above, all Wireless Communication Facilities shall require a conditional use permit. A conditional use permit application for Wireless Communication Facilities shall be submitted to and processed by the Community Development Department to determine that the proposed Facility complies with all the requirements of this chapter and with all the applicable requirements of other chapters of the Burlingame Municipal Code. Once the application is complete, it shall be placed on the action calendar of the next available Planning Commission meeting for consideration. A conditional use permit for Wireless Communication

Facilities may be granted only after a public hearing before and approval by, the Burlingame Planning Commission.

**25.77.055 Pre-application meeting**

Prior to filing an application for a use permit for the installation of Wireless Communication Facility, an applicant is encouraged to schedule a pre-application meeting with the Community Development Department to discuss the proposed Facility, all of the requirements of this Chapter and any potential impacts of the proposed Facility. The applicant will be encouraged to perform an early stage outreach with residents and property owners near the proposed Facilities in order to address and, if possible, resolve any impacts of the proposed Facilities on the surrounding neighborhood.

**25.77.060 Contents of permit application**

A. Conditional Use Permit. An applicant for a Wireless Communication Facility conditional use permit shall complete and submit an application, together with all required information, to the Community Development Department for review and processing. The application shall contain and include all of the following:

1. Name, address, phone number, email address of:
  - a. the owner of the proposed Facility;
  - b. the applicant if different than owner;
  - c. any proposed service provider tenant.
2. If the proposed Facility is to be located in the public right-of-way, a copy of the CPUC documentation granting right of owner to locate utility facilities in right-of-way.
3. A clear written description of the proposed Facility that includes the number of antennas, the location and length of fiber/cable, the location and dimensions of all related equipment (cabinets, generators, batteries, cooling, transmitters, hubs etc.); such written description shall provide how this Facility relates to the overall wireless network for the carrier(s) it is servicing as well as how this Facility relates to other wireless Facility projects in process of being constructed and/or planned in or near the City of Burlingame.
4. A site plan with photos, depicting the location and dimension of the proposed Wireless Communication Facilities and of the existing surrounding area features including structures, roads, trees, and similar items;
5. A map identifying the applicant's existing and planned Wireless Communications Facilities within city limits. The map shall include an illustration of the estimated coverage area (search area) for all existing and proposed Wireless Communication Facility sites for the applicant and/or service provider and shall include an explanation of how the proposed Wireless Communication Facility fits into the individual service provider's network of existing and proposed Wireless Communication Facility sites within a tentative 2-year plan.
6. An explanation of the Wireless Communication Facility site selection process including information about other sites which were considered, the reasons for the rejection of other

sites, the reason that this particular facility is required to cover a gap in service, and the reason why the gap in service cannot be covered with another location or another technology.

7. Visual impact demonstrations using clear, accurate and readable photo-simulations of all of the proposed Wireless Communication Facilities. The simulations should contain dimensions, height measurements and color, size and shape (proper coloration and blending of the Facility with the proposed site) of the proposed Facilities in order to facilitate determination of potential visual impacts

8. If applicable, landscape plan that shows existing vegetation, indicating any vegetation proposed for removal, and identifying proposed plantings by type, size and location.

9. Information regarding potential environmental impacts (e.g., noise, visual, traffic, etc) that may result from the installation of the Wireless Communication Facility.

10. Certification by a qualified third party that the proposed Wireless Communication Facility will comply with applicable radio frequency (RF) emission standards as established by the FCC. Such documentation may be satisfied by a written demonstration of compliance with FCC Bulletin OET-65, as amended.

11. Written description of any noise, light and/or heat generated by the Facility, including but not limited to, retractable monopole motors, antenna rotators, power generation, cooling equipment and similar items.

12. If applicable, an explanation for any deviation of the proposed Facility from any of the design standards or other requirements of this Chapter. Deviations are discouraged and shall only be granted where required by state or federal law.

13. Additional information the Community Development Director deems necessary to process the application in compliance with the requirements of this chapter. This may include, but is not limited to, information concerning noise that might be generated by equipment associated with a Wireless Communication Facility, such as air conditioning equipment.

14. At the applicant's expense, the City may require verification of the applicant's submitted technical data by a qualified independent third party selected by the City. The technical data subject to third party verification shall be limited to the determinations that:

- a. the Wireless Communications Facilities are compliant with FCC regulations, and
- b. the Facilities are required to cover a gap in service.

B. Administrative Use Permit. An applicant for an administrative use permit for Wireless Communication Facility shall complete and submit an application, together with all required information, to the Community Development Department for review and processing. The application shall contain and include information required under subsection A 1 through 7, 10 and 13,14.

C. If an applicant fails to provide all of the information required in the application or any additional information required in support of the application, the application will not be deemed complete. No action will be taken on an incomplete application. If the application remains incomplete for more than sixty (60) days, the application will be deemed withdrawn and no further action will be taken in regard to it.

**25.77.070 Application fee**

The application shall be accompanied by an application fee in an amount necessary to recover the City's reasonable cost of processing the application. The fee shall be set by resolution of the City Council and included in the City's master fee schedule. Failure to include the fee with the application shall render the application incomplete and no action will be taken on the application until the fee is paid.

**25.77.080 General Requirements**

A. State or Federal Requirements. All Wireless Communication Facilities shall meet or exceed current standards and regulations of the FCC, the FAA, and any other agency of the State or Federal government with the authority to regulate Wireless Communication Facilities. If such standards and regulations are changed and are made applicable to existing Facilities, the owners of the Facilities governed by this chapter shall bring such Facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring Wireless Communication Facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the Facilities at the owner's expense, revocation of any permit or imposition of any other applicable penalty.

B. Building Codes and Safety Standards. To ensure the structural integrity of Wireless Communication Facilities, the owner shall ensure that the Facility is constructed and maintained in compliance with standards contained in applicable State or local building codes and the applicable standards that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City concludes that a Wireless Communication Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner and the opportunity to be heard as afforded by the applicable building code, the owner shall have ninety (90) days to bring such Facility into compliance with such standards. Failure to bring such Facility into compliance within said thirty days shall constitute grounds for the removal of the Facility at the owner's expense, revocation of any permit or imposition of any other applicable penalty.

C. Location Preference Order

In determining the location of proposed Wireless Communication Facilities, applicants should use best efforts to comply with the location preference order outlined herein. If applicable, the applicant shall include an explanation of the reason that the proposed facilities cannot be deployed at a higher-preference location. Wireless Communication Facilities must be located where feasible in the following locations by descending priority:

1. Locations within Non-Residential Zoning Districts, which are more than five hundred (500) feet from Residential Zoning Districts or the Burlingame Downtown Districts and which are not within the Burlingame Downtown Districts:

- a. Completely enclosed within existing, permitted buildings.
- b. Located on electric power transmission towers.

- c. Co-located on existing Wireless Communications Facilities
- d. The roof of existing structures (buildings, water tanks, etc), designed to blend in with the building, camouflaged or screened from the public right of way which constitutes a pedestrian travel corridor.
- e. The side of existing structures (buildings, water tanks, etc.), designed to blend in with the building, camouflaged or screened from the public right of way which constitutes a pedestrian travel corridor.
- f. Camouflaged Stealth Structure (a false tree, building, artifice, etc).
- g. Existing utility poles, with all ancillary equipment placed underground if feasible, camouflaged or screened.
- h. Existing utility distribution poles and street lights.
- i. Slim line monopole, with antennas in a canister at the same diameter as the pole.
- j. Standard monopole with attached flush-mounted (not extending more than 24 inches from the pole) antenna elements.

2. Non-residential Zoning Districts within five hundred (500) feet of Residential Zoning Districts or the Burlingame Downtown Districts, and the Burlingame Downtown Districts.

- a. Integrated into non-residential uses (libraries, churches, temples, etc.) designed to blend in with open space (playing fields, parking lots, parks, etc.); hidden from pedestrian view by means of Stealth Design, Stealth Structures, architectural integration or screening.
- b. Co-located on existing Wireless Communications Facilities which are in compliance with the provision of this chapter.
- c. In public right-of-way, within new light poles with interior stealth installations of cabling and antenna, and to the extent feasible, control equipment.
- d. In public right-of-way, on existing utility or light poles, with all ancillary equipment either underground, if feasible, camouflaged, screened or painted to blend into the surrounding structure

3. Residential Zoning Districts:

- a. Integrated into non-residential uses (libraries, churches, temples, etc.) or designed to blend in with open space (playing fields, parking lots, parks, etc.); hidden from view by means of Stealth Design, Stealth Structures, architectural integration or screening.

- b. Co-located in existing Wireless Communications Facilities which are in compliance with the provisions of this chapter.
- c. In public right-of-way, within new light poles with interior stealth installations of cabling and antennae, and to the extent feasible, control equipment.
- d. In public right-of-way, on existing utility or light poles, with all ancillary equipment either underground, if feasible, camouflaged, screened or painted to blend into the surrounding structure.

**25.77.090 Design criteria for wireless communications facilities**

The goal of these regulations is to reduce to the greatest extent possible all visual impacts resulting from the installation of Wireless Communications Facilities. Stealth Design and Stealth Structures for these Facilities shall be considered the normal standard for all Wireless Communications Facilities. Non-stealth designs and structures shall not be approved without evidence, independently verified, that it is not possible (using best efforts by applicant) to stealth such facilities. Applications shall be reviewed to determine compliance with the following criteria. If the applicant's proposed Facility cannot comply with the following criteria, the application shall include a detailed explanation of why it is not reasonably feasible to comply with the criteria.

A. Wireless Communication Facilities should be co-located where feasible and where the co-location does not create an adverse aesthetic impact due to such factors as increasing the bulk, the height or the amount of noise created by the proposed co-located Facilities.

B. Wireless Communication Facilities should to the greatest extent feasible, not be located in Residential Zoning Districts.

C. Wireless Communication Facilities should be designed, located and constructed in a manner that minimizes visual and auditory impacts of the Facilities. The Wireless Communication Facilities shall blend into the surrounding environment and/or shall be architecturally integrated into a structure, considering the color, design and character of the surrounding context (e.g., public art, clock towers, flagpoles, trees/vegetation, rocks, water tank, existing office/industrial buildings, and church steeples). Specifically, the proposed Facilities shall comply, to the greatest extent feasible, with the following:

1. The Facilities should be concealed, screened or camouflaged by the surrounding topography, vegetation, buildings, or other setting.

2. The Facilities should be proportional in size relative to surrounding and supporting structures and ability for co-location by other providers.

3. Roof mounted Facilities should be, out of view and screened; these facilities shall be set back at least one (1) foot from the edge of the roof for every one (1) foot of antenna height and shall not exceed ten (10) feet in height above the roof surface.

4. Wall mounted Facilities should be compatible in scale and design with the building, shall be flush mounted, i.e., not extending from the face of the building more than 24 inches and shall be

painted and/or textured to match the wall of the building. All cables and brackets, wires, shall also be hidden.

5. All Facilities should be constructed of graffiti-resistant materials.

6. All concealing, screening, painting, camouflaging and/or use of Stealth Designs and Stealth Structures should be consistent with 25.77.010 (Purpose) including but not limited to promoting wholesome, attractive, harmonious and economic use of property, building construction, civic service, activities and operations in conformity with and preserving the overall aesthetics of City neighborhoods including its character and its century old architectural traditions.

D. Where applicable, appropriate landscaping should be installed in and around the proposed Wireless Communication Facilities.

E. Any exterior lighting on the Facilities should have a manual on/off switch and be contained on site.

F. Ground equipment of the Facilities should be concealed, screened, camouflaged or hidden using Stealth Design, Stealth Structures, underground installation or landscaping and fencing.

G. Signage in, on or near any Facilities should be prohibited with the exception of warning and informational signs, which shall be designed with minimal aesthetic impact.

H. Wireless Communication Facilities should be discouraged in areas subject to the City's hillside construction permit as designated in section 25.61.010; if Facilities cannot be avoided in the hillside areas, then visual impacts should be eliminated through Stealth Design, Stealth Structures and landscaping.

I. Support wires for structures should be discouraged.

J. The Wireless Communication Facilities should be designed to discourage unauthorized access.

#### **25.77.100 Wireless Communications Facility Guidelines**

A. By resolution, the City Council will provide a Wireless Communications Facilities Guidelines which shall describe and provide pictorial examples of stealth designs for Wireless Communication Facilities, preferred types of screening, landscaping and camouflaging, preferred locations for ground-mounted, roof mounted and side-mounted Facilities and dimensions for height, set-back and bulk. The Community Development Department will update the Guidelines for City Council approval periodically, but no less than once every two years, in order to consider the inclusion of new technologies, innovations and current best examples which would further the goal of reducing the impacts of Facilities. The Guidelines are examples of Facilities which may comply with the design standards contained in this chapter. However, the design standards and the findings of the Planning Commission shall have precedence over the Guidelines. Because of the speed of technological change and the time between updates of the City Guidelines, the applicant should understand that the Guidelines are intended to assist the applicant in choosing potentially preferred designs, but are not intended to suggest that such examples will be approved or that such examples are mandated.

B. The Guidelines document shall include photos and descriptions of:

1. Monopoles that blend into surrounding vegetation, minimize the lattice structure, and avoid guy wires, while still meeting safety standards.

2. Facilities utilizing existing towers or utility poles to extend wireless service area. When appropriately mounted on suitable utility poles, the additional antenna facilities have an insignificant visual impact beyond that which the existing structure presents.

3. Stealth Structures and design features which exhibit uniform consistency in size, character and color to that of the surrounding environment (e.g., public art, foliage, trees, buildings, rocks, church steeples or other structures, including samples of size and coloring).

4. Ground-mounted, roof mounted and side-mounted Facilities with dimensions, and measurements for height, set-back and bulk of the Facilities.

**25.77.110 Conditional Use Permit-Notice of Public Hearing to Property Owners; Action by Planning Commission**

A. Notice of Public Hearing. Once the application and all supporting information and documentation has been received, notice of a public hearing before the Planning Commission regarding the conditional use permit for Wireless Communications Facilities shall be given according to the provision of section 25.16.050. Notice shall be mailed to owners and occupants within three hundred (300) feet on either side of the boundary of the proposed Wireless Communication Facility.

In addition to the information required by section 25.16.050, the following information shall also be provided with the notice:

1. Project Description and Site Plan, as provided in the application.

2. Map of entire project as provided in the application.

3. Complete photo simulations which accurately depict Facilities as provided in the application. Applicant shall ensure that photo simulations do not mislead residents as to the aesthetic impacts of the Facilities.

More detailed information, including but not limited to elevations and alternatives analysis, as provided in the application, shall be placed on the City's website and this information shall be referenced in the notice.

B. Notice Posted on Site. The notice of public hearing shall also be posted in a conspicuous location on or near the site of the proposed Facilities.

C. Action by Planning Commission. On the time and date set for the public hearing, the Planning Commission shall conduct the public hearing regarding the application for conditional use permit for Wireless Communication Facilities and shall take action pursuant to Burlingame Municipal Code section 25.16.060.

**25.77.120 Administrative Use permit-Notice of Project to Property owners;  
Action by Community Development Director**

A. Once the application and all supporting information and documentation have been received, notice of the application for the proposed Wireless Communication Facilities shall be given according to the provision of section 25.16.050. Notice shall be given to all property owners within three hundred (300) feet of any of the proposed Facilities. In addition to the information required by section 25.16.050 to be included in the notice, the following information shall also be provided:

1. Project Description and Site Plan as provided in the application.
2. Map which accurately and clearly depicts location of entire project as provided in the application.

More detailed information, including but not limited to photo simulations, elevations and alternatives analysis, as provided in the application, shall be placed on the City's website and this information shall be referenced in the notice.

The notice shall also state that, unless a written request for a public hearing is received by the Community Development Department within twenty-one (21) days after the date of the notice, the Community Development Director shall take action on the application and may either grant or deny the administrative use permit and may impose conditions as applicable.

B. Action by Community Development Director. If no written request for a public hearing regarding the application for administrative use permit for the Wireless Communication Facilities is received by the Community Development Department within twenty-one (21) days of the date of the notice, the Community Development Director shall take action on the application and may either grant or deny the administrative use permit and may impose conditions as applicable. If a written request for a public hearing is received, within twenty-one (21) days of the date of the notice, the Community Development Director shall schedule the application for a public hearing before the Planning Commission in accordance with section 25.16.060.

**25.77.125 Wireless Facilities in Public Right-of-Way; DPW Review**

Review of an application for a Wireless Communication Facilities use permit in the public right-of-way will be processed by the Community Development Department pursuant to the provisions of this chapter. It is acknowledged that the City's regulations of utilities properly certified by the State Public Utilities Commission and proposed for location in the public-right-of-way must be imposed in a manner consistent with Sections 7901 and 7901.1 of the Public Utilities Code. In reviewing the application for placement of Facilities in the public right-of-way, the Director shall apply the design criteria of this chapter to determine, in a manner consistent with the Public Utilities Code, the appropriate restrictions for the proposed Facilities. The application for Facilities within the public right-of-way shall be referred to and reviewed by the Public Works Department to ensure that the proposed Facilities will not interfere with, present a hazard to, or otherwise incommode the use of the right-of-way. A use permit issued by the City for the installation of Wireless Communication Facilities in the public right-of-way shall also constitute an encroachment permit.

**25.77.130 Conditions of Approval.**

In approving a use permit pursuant to this chapter, the approving authority may impose conditions, not prohibited by applicable Federal and State law, which are deemed necessary to ensure compliance with the provisions of this chapter, the provisions of the Burlingame Municipal Code and the provisions of any other applicable laws and regulations.

**25.77.140. Post-Approval Requirements.**

To ensure that the Wireless Communication Facilities continue to meet the requirements of this chapter, periodic post-installation verification shall be required. Failure to provide this information or to comply with these requirements may be grounds for permit revocation.

A. Validation of Proper Operation. Within forty-five (45) days of commencement of the Facilities operation, the applicant shall provide verification by independent qualified experts that the RF levels of the Facilities comply with FCC regulations and with the City noise regulations.

B. Five-Year Review. The applicant shall report to the City every five (5) years from the date of commencement of the Facilities operation, a review of the condition of the Facilities, of the Facilities compliance with Federal and State regulations and of the Facilities compliance with the provisions of this chapter and the conditions of approval. The applicant shall also provide updated contact information for the owner and the applicant and verifiable confirmation information as to what carrier(s) are using the Facility.

C. City Business License. The applicant shall procure and maintain a City business license, contact information for the applicant, for the agent responsible for maintenance of the Facilities and for emergency contact.

D. Security Bond to remove Facility. The applicant shall either secure a bond, letter of credit or other similar financial assurance, in a form acceptable to the City, for the removal of the Facility in the event that its use is abandoned, its operation is ceased or the approval is terminated.

E. Maintenance. Maintenance and repairs to Wireless Communication Facilities shall be permitted provided that such maintenance and repair does not enlarge or extend the Facilities structure or equipment enclosures or change the number, type, dimensions, of the antenna or related equipment. All Facilities shall be operated and maintained in compliance with the following requirements:

1. Where applicable and feasible, each Wireless Communication Facilities site shall have a sign visible from a publicly accessible area, identifying the name, address, twenty-four-hour local or toll-free contact telephone number for both the applicant and the party responsible for maintenance of the Facility. Information shall be updated in the event of any changes.

2. Current contact information of the person or entity responsible for maintaining and repairing the Facility shall be provided to and maintained by the Community Development Department.

3. Wireless Communication Facilities and sites shall be kept clean and free of graffiti, litter and debris. Lighting, fences, shields, cabinets, and poles, shall be maintained in good repair and free of graffiti and other forms of vandalism, and any damage from any cause, including degradation from wind and weather, shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any Facility as soon as practicable, and in no instance more than two (2) business days from the time of notification by any person or entity.

4. Where applicable, the owner or provider of Wireless Communication Facilities shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan. A landscape performance and maintenance agreement with the City may be required to ensure the installation and establishment of the landscaping. Amendments or modifications to the landscape plan shall be submitted to the Planning Director for approval.

5. To the greatest extent possible, Wireless Communication Facilities shall be operated in a manner that will minimize noise impacts to surrounding properties.

- a. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of eight a.m. and six p.m. on Monday through Friday, excluding holidays.
- b. Noise originating from any equipment shall be mitigated to the extent necessary to ensure compliance with applicable noise limitations under the Burlingame Municipal Code.
- c. Backup generators shall only be operated during periods of power outages or for testing during a set period.

**25.77.150 Term.**

A conditional or administrative use permit for wireless communication facilities shall be valid for ten (10) years from the date of approval.

**25.77.160 Renewal.** An applicant may renew a conditional or administrative use permit for Wireless Communication Facilities pursuant to the provisions of this section.

A. At least one hundred and twenty (120) days prior to the expiration of the initial ten (10) year term, the applicant shall complete and submit a renewal application to the Community Development Director. The application shall be in the same form as the application for a new Facility and shall contain and include the following information:

1. Name, address, phone number, email address of the owner of the proposed facility and of the applicant if different than owner; if proposed facility is to be in the right-of-way, a copy of the CPUC documentation granting right of owner to locate utility facilities in right-of-way.

2. Accurate photos and final construction drawings of all of the currently existing Wireless Communication Facilities authorized by the use permit which is the subject of the renewal application.
3. As applicable, supplement original application with current, updated information.
4. Information describing new technologies, Stealth Design and Stealth Structures which may be applied to modify the current Wireless Communications Facilities and, if applicable, stated reasons for the failure to employ such new technology and design on the current Facilities which are the subject of the renewal application.

B. Fee. The renewal application shall be accompanied by a fee designed to recover the reasonable cost of processing the application. Failure to include the fee with the renewal application shall render the application incomplete and no action will be taken on it until the fee is paid.

C. Notice. Notice of the renewal application for the existing Wireless Communication Facilities shall be given according to the provision of section 25.16.050. Notice shall be given to all property owners within three hundred (300) feet of the Facilities.

D. Action by Community Development Director.

1. If no written request for a public hearing regarding the application for renewal of the conditional or administrative use permit for the wireless communications facilities is received by the Community Development Department within twenty-one (21) days of the date of the notice, the Community Development Director shall take action on the application pursuant to the design guidelines and criteria contained within this chapter and may either grant or deny the administrative use permit and may impose conditions as applicable.

2. If a written request for a public hearing is received within twenty-one (21) days of the date of the notice, the Community Development Director shall schedule the application for a public hearing before the Planning Commission in accordance with section 25.16.060.

3. If the Community Development Director cannot make the findings of this chapter based upon the renewal application based upon the renewal application and supporting materials, the Director may refer the application that otherwise would be subject to renewal as an administrative use permit, for review and approval by the Planning Commission at a public hearing.

E. Action by Planning Commission. On the time and date set for the public hearing, the Planning Commission shall conduct the public hearing regarding the renewal application for conditional use permit for Wireless Communication Facilities and shall take action pursuant to Burlingame Municipal Code section 25.16.060.

**25.77.165 Modification**

A. If an owner or applicant seeks to change, alter, revise or add to the wireless communications facilities, the following shall apply:

1. if the Facilities are modified in a “like for like” manner that results in a decrease of size of any component or an increase in size of any one component not to exceed 25% of the base component size, a permit under this chapter would not be required. If applicable, applicant shall obtain a building permit.
2. if the Facilities are modified in a manner resulting in an increase of more than 25% of the size of any component of the Facility when compared to the base component size, the applicant shall submit an application for the same permit which such Facility would have required if it were a new Facility, pursuant to section 25.77.060.
3. if the addition of antennas or other equipment on the Facility increases the visual (e.g., height, bulk) or audio impact of the Facility, then the applicant shall submit an application for the same permit which such Facility would have required if it were a new Facility, pursuant to section 25.77.060.
4. if the addition or modification of ground-mounted equipment significantly changes the visual or audio impact of the Facility, the applicant shall submit an application for an administrative review by the Community Development Director to ensure compliance with existing conditions of approval. If the Director determines that the proposed modification does not significantly comply with the existing conditions of approval, the applicant shall submit an application for the same permit which such Facility would have required if it were a new Facility, pursuant to section 25.77.060.

B. “Base component size” as used in this section, means the smaller of the size of the originally approved component or of the size of the component as subsequently reduced pursuant to a previous modification.

C. Any permit application required under Section 25.77.165A, whether for an administrative or a conditional use permit, shall be processed in the same manner and with the same requirements as an application for new facilities pursuant to sections 25.77.070 to 25.77.150.

**25.77.170 Cessation of operations.**

A. Vacation. The service provider shall notify the Community Development Director of the intent to vacate a site at least thirty (30) days prior to the vacation.

B. Cessation of Operations. If a Wireless Communication Facilities site is not operated for a continuous period of twelve (12) months, the conditional or administrative use permit for that Facility shall be deemed terminated unless before the end of the twelve month period:

1. The Community Development Director has determined that the same operator resumed operation; or

2. The City has received an application to transfer the permit to another service provider.

C. No later than ninety (90) days from the date the Facility is determined to have ceased operation or the Provider has notified the Community Development Director of the intent to vacate the site, the owner of the Wireless Communication Facilities or the owner of the property on which the Facilities are sited shall remove all equipment and improvements associated with the use and shall restore the site to its original condition as required by the Community Development Director. The provider or owner may use any bond or other assurances provided by the operator to do so. The owner or his agent shall provide written verification of the removal of the Facilities within thirty (30) days of the date the removal is completed.

C. If the Facility is not removed within thirty (30) days after the permit has been discontinued pursuant to either subsection A or B of this section, the site shall be deemed to be a nuisance pursuant to Chapter 1.18 of the Burlingame Municipal Code, Nuisance Abatement, and the City may cause the Facility to be removed at the owners' expense or by calling any bond or other financial assurance to pay for removal. If there are two or more users of a single tower, then this provision shall apply to the abandoned antenna but not become effective for the tower until all users cease using the tower. The requirement for removal of equipment in compliance with this section shall be included as a provision in any lease of private property for placement of Wireless Communication Facilities.

**Division 3. Conflict with State of Federal Law.**

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by State or federal law at the time such agency or department action is taken.

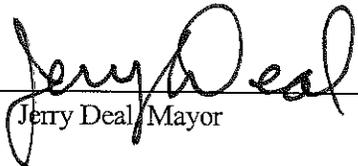
**Division 4. Severability.**

If any of the provisions of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

**Division 5. Environmental Findings.**

The Planning Department has determined that the actions contemplated in this ordinance are in compliance with the California Environmental Quality Act because there exists no possibility that the enactment of this regulatory ordinance may have a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

**Division 6.** This ordinance shall be published according to the requirements of state law.

  
Jerry Deal, Mayor

I, Mary Ellen Kearney, City Clerk of the City of Burlingame, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on the 17<sup>th</sup> day of January, 2012, and adopted thereafter at a regular meeting of the City Council held on the 6<sup>th</sup> day of February, 2012, by the following vote:

AYES: COUNCILMEMBERS: **BAYLOCK, BROWNRIGG, DEAL, NAGEL**  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS: **KEIGHNAN**

  
Mary Ellen Kearney, City Clerk