

**Chapter 23C.17**  
**WIRELESS TELECOMMUNICATION FACILITIES**

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**Section 23C.17.010 Applicability of Regulations**

The regulations contained in this chapter shall apply to all wireless telecommunications facilities for personal wireless services on property other than the public right of way in the City of Berkeley.

**Section 23C.17.020 Purpose**

- A. The purpose of this chapter is to provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities”) for personal wireless services. These regulations are designed to protect and promote public safety, community welfare and the aesthetic quality of the city consistent with the goals, objectives and policies of the Berkeley Master Plan, while at the same time providing for managed development of wireless telecommunications infrastructure in accordance with the Telecommunications Act of 1996.
- B. The objectives of this chapter include but are not limited to the following:
  - 1. Foster an aesthetically pleasing urban environment, prevent visual blight, protect and preserve public safety and general welfare, and maintain the character of residential areas, including those adjacent to commercial areas and neighborhood commercial areas, consistent with the adopted General Plan and Area Plans and in compliance with applicable state and federal legislation;
  - 2. Because wireless telecommunications antennas and related facilities for cellular and mobile phones and personal communications systems are a commercial use that is usually separate from and is rarely accessory to the primary use of a parcel, to prevent the location of such facilities in residentially zoned districts

- 42 unless (a) the City is required to permit them in such locations in order to avoid  
43 violating the Telecommunications Act of 1996 and (b) the wireless  
44 telecommunications facilities are designed to interfere as little as possible with  
45 the character of the neighborhood;
- 46 3. Establish and maintain telecommunications facilities that are components of a  
47 wireless telecommunications infrastructure designed to enhance the city's  
48 emergency response network and do not interfere with such emergency systems  
49 in violation of applicable federal or state regulations;
- 50 4. Establish a process for obtaining necessary permits for wireless  
51 telecommunication facilities that provides greater certainty to both applicants and  
52 interested members of the public while ensuring compliance with all applicable  
53 zoning requirements;
- 54 5. Provide opportunities for further reduction in potential aesthetic or land use  
55 impacts of wireless telecommunications facilities as changes in technology occur;  
56 and
- 57 6. Support the use of personal wireless services to enhance personal and public  
58 health and safety as well as the public welfare of the City of Berkeley.

59 **Section 23C.17.030 General Requirements**

60 In addition to any other requirements imposed by this chapter, all wireless  
61 telecommunications facilities on property other than the public right of way in the City of  
62 Berkeley shall be consistent with:

- 63 A. The Berkeley General Plan, adopted Area Plans, and all other applicable provisions  
64 of the Zoning Ordinance.
- 65 B. Applicable regulations and standards of any other governmental agency with  
66 jurisdiction over the installation or operation of wireless telecommunications facilities  
67 including, but not limited to, the Federal Communications Commission, the Federal  
68 Aviation Administration, and the California Public Utilities Commission.
- 69 C. Any applicable discretionary permits affecting the subject property except to the  
70 extent the Zoning Officer or the Zoning Adjustments Board may modify such  
71 requirements.

72 **Section 23C.17.040 Minimum Application Requirements**

- 73 A. Purpose. This Section establishes limited additional application submittal  
74 requirements for wireless telecommunications facilities. ~~Such additional application~~  
75 ~~requirements are necessary because wireless telecommunications facilities are~~  
76 ~~distinct from the vast majority of other types of land use applications under this Title~~  
77 ~~in that although they are by nature incidental to existing uses and structures, they~~  
78 ~~are distinct from other incidental uses because they result in impacts beyond those~~  
79 ~~normally associated with the primary use of the property.~~ The purpose of these  
80 additional application requirements is to ensure that the purposes of this Chapter are  
81 implemented to the extent permitted by the Telecommunications Act of 1996.

- 82 B. In addition to meeting the standard application submittal requirements for permits  
83 specified in Chapter 23B.24, applications for wireless telecommunication facilities  
84 pursuant to this chapter, shall include the information set forth in this Section.
- 85 C. Coverage map and general information.
- 86 1. A narrative description and map showing the coverage area of the provider's  
87 existing facilities that serve customers in Berkeley and the specific site that is the  
88 subject of the application.
- 89 2. A statement of the telecommunications objectives sought for the proposed  
90 location, whether the proposed facility is necessary to prevent or fill a significant  
91 gap or capacity shortfall in the applicant's service area, whether it is the least  
92 intrusive means of doing so, and whether there are any alternative sites that  
93 would have fewer aesthetic impacts while providing comparable service.  
94 Applications for Administrative Use Permits need not include information as [to](#)  
95 whether the proposed facility is necessary to prevent or fill a significant gap or  
96 capacity shortfall in the applicant's service area.
- 97 D. Technical information.
- 98 1. Copies of, or a sworn statement by an authorized representative that applicant  
99 holds, all applicable licenses or other approvals required by the Federal  
100 Communications Commission (FCC), the California Public Utilities Commission  
101 (PUC), and any other agency of the Federal or State government with authority  
102 to regulate telecommunications facilities that are required in order for the  
103 applicant to construct the proposed facility.
- 104 2. Documentation of, or a sworn statement by an authorized representative that  
105 applicant is in, compliance with all conditions imposed in conjunction with such  
106 licenses or approvals, a description of the number, type, power rating, frequency  
107 range, and dimensions of antennas, equipment cabinets, and related wireless  
108 telecommunications facilities proposed to be installed, and engineering  
109 calculations demonstrating that the proposed facility will comply with all  
110 applicable FCC requirements and standards.
- 111 E. Visibility.
- 112 1. A site plan, plans, and elevations drawn to scale. Plans shall include microcell,  
113 façade- or roof-mounted antennas and all related equipment. Elevations shall  
114 include all structures on which facilities are proposed to be located.
- 115 2. A description of the proposed approach for screening or camouflaging all  
116 facilities from public view including plans for installation and maintenance of  
117 landscaping, sample exterior materials and colors, and an explanation of the  
118 measures by which the proposed facility will be camouflaged or rendered not  
119 readily visible. Where any part of the proposed facility would be readily visible,  
120 the application shall include an explanation as to why it cannot be rendered not  
121 readily visible.
- 122 3. A visual impact analysis including scaled elevation diagrams within the context of  
123 the building, before and after-photo simulations, and a map depicting where the

124 photos were taken. The Zoning Officer may require the submission of photo  
125 overlays, scaled models, renderings, or mockups to document the effectiveness  
126 of techniques proposed to minimize visibility.

127 4. If a ground-mounted or freestanding tower is proposed, the application must  
128 include an explanation as to why other facility types are not feasible.

129 F. Peer review.

130 1. The application shall include sufficient information for an approved radio  
131 frequency engineer or licensed electrical engineer specializing in EMF or RFR  
132 studies (hereinafter, "an approved engineer") retained by the City to peer review  
133 the information provided in response to subdivisions C and D of this Section.

134 2. The application shall also include an agreement to pay the reasonable actual  
135 cost and a reasonable administrative fee for hiring an approved engineer to  
136 provide peer review.

137 3. Any proprietary information disclosed to the city or ~~its engineer the consultant~~  
138 in confidence shall not be a public record and shall remain confidential and not be  
139 disclosed to any third party without the express consent of the applicant. The City  
140 ~~and/or its engineer~~ shall return all proprietary information to the applicant and not  
141 retain any copies of such information once its decision is final.

142 G. Monitoring. An agreement to pay a reasonable one-time or annual fee for  
143 independent monitoring as required by this Chapter.

144 H. A statement that prior to obtaining a building permit to erect or install the proposed  
145 facility, the applicant shall either secure a bond or provide financial assurances, in a  
146 form acceptable to the City Manager, for the removal of the facility in the event that  
147 its use is abandoned or the approval is otherwise terminated.

148 I. The Zoning Officer may ~~require~~ request information concerning noise that might be  
149 generated by equipment associated with a wireless telecommunication facility, such  
150 as air conditioning equipment, if the physical circumstances of the proposed facility  
151 suggest that such noise may be detrimental.

152 **Section 23C.17.050 Locational Requirements**

153 A. Reserved.

154 B. No wireless communications facilities shall be sited on or above a ridgeline or at any  
155 other location readily visible from a public park, unless the Zoning Adjustments  
156 Board, makes the applicable findings required in Section 23C.17.100.

157 C. No new freestanding facility, including towers, lattice towers and monopoles, shall be  
158 located within 1,000 feet of another freestanding facility, unless appropriate stealth  
159 techniques have been used to minimize the visual impact of the facility to the extent  
160 feasible, and mounting on a building or co-location on an existing pole or tower is not  
161 feasible.

162 D. The Zoning Officer may approve minor modifications and aesthetic upgrades that do  
163 not increase the size or visibility of any legally established wireless

164 telecommunication facilities without notice or hearing, subject to compliance with all  
165 existing conditions of approval.

166 **Section 23C.17.060 Height Requirements**

- 167 A. The height of a telecommunications tower shall be measured from existing grade  
168 below the center of the base of the tower to the top of the tower itself or, if higher, to  
169 the tip of the highest antenna or piece of equipment attached thereto. The height of  
170 building-mounted antennas shall include the height of that portion of the building on  
171 which the antenna is mounted. In the case of “crank-up” or similar towers whose  
172 height is adjustable, the height of the tower shall be the maximum height to which it  
173 is capable of being raised.
- 174 B. No antenna telecommunications tower or façade-mounted antenna shall exceed or  
175 project above the height limits specified for the district in which the antenna is  
176 located.
- 177 C. Roof-mounted antennas affixed to an existing or proposed tower or pole shall not  
178 extend or project more than 15 feet above the height limit of the district.
- 179 D. Roof-mounted or façade-mounted antennas proposed on an existing building, tower,  
180 or pole that is legal non--conforming in terms of height shall not extend or project  
181 more than 15 feet above the existing height of the building or structure.

182 **Section 23C.17.070 Design Requirements**

183 In addition to all other requirements set forth in this chapter, all wireless  
184 telecommunication facilities shall meet the following design requirements:

- 185 A. Based on potential aesthetic impact, the order of preference for facility type is:  
186 microcell, façade-mounted, roof-mounted, ground-mounted, and freestanding tower.
- 187 B. All facilities shall be designed and located to minimize their visibility to the greatest  
188 extent feasible, considering technological requirements, by means of placement,  
189 screening, and camouflage. The applicant shall use the smallest and least visible  
190 antennas feasible to accomplish the owner/operator’s coverage or capacity  
191 objectives. All wireless telecommunications facilities proposed for locations where  
192 they would be readily visible from the public right-of-way or from the habitable living  
193 areas of residential units within 100 feet shall incorporate appropriate techniques to  
194 camouflage or disguise the facility, and/or blend it into the surrounding environment,  
195 to the greatest extent feasible. Facilities shall be compatible in scale and integrated  
196 architecturally with the design of surrounding buildings or the natural setting.
- 197 C. No readily visible antenna shall be placed at a location where it would impair a  
198 significant or sensitive view corridor except as provided in subsection 1, below.
- 199 1. Roof-mounted antennas shall be located in an area of the roof where the visual  
200 impact is minimized. Roof-mounted and ground-mounted antennas shall not be  
201 placed in direct line of sight of significant or sensitive view corridors or where  
202 they adversely affect scenic vistas unless the Zoning Officer or the Zoning  
203 Adjustments Board finds that the facility incorporates appropriate, creative stealth  
204 techniques to camouflage, disguise, and/or blend into the surrounding

205 environment to the extent possible. Roof mounted antennas shall be designed  
206 and sited to minimize their visibility and shall be no taller than necessary to meet  
207 the operator's service requirements. Where roof-mounted antennas are readily  
208 visible, confirmation of necessary height for service requirements, at the Zoning  
209 Officer's discretion, shall be based on independent analysis by an approved  
210 engineer retained by the City.

211 2. Satellite dish or parabolic antennas shall be situated as close to the ground as  
212 possible to reduce visual impact without compromising their function. When  
213 screened from pedestrian-level view from the public right-of-way and not readily  
214 visible from any property that contains a legally-established residential use, such  
215 antennas may be located in any required yard subject to the approval of a Use  
216 Permit under Section 23D.08.060.B. No such antenna may exceed 39 inches in  
217 diameter unless the Zoning Officer or the Zoning Adjustments Board finds that a  
218 smaller antenna cannot feasibly accomplish the provider's technical objectives.  
219 The Zoning Officer may require that this determination be based on independent  
220 technical analysis by an approved engineer.

221 3. All monopoles and lattice towers shall be designed to be the minimum functional  
222 height and width required to support the proposed antenna installation unless a  
223 higher monopole or lattice tower will facilitate co-location or other objectives of  
224 this Chapter.

225 D. Colors and materials for facilities shall be chosen to minimize visibility. All visible  
226 exterior surfaces shall be constructed of non-reflective materials. Facilities shall be  
227 painted or textured using colors to match or blend with the primary background.

228 E. Facility lighting shall be designed to meet but not exceed minimum requirements for  
229 security, safety or FAA regulations, and in all instances shall be designed to avoid  
230 glare and minimize illumination on adjacent properties. Lightning arresters and  
231 beacon lights shall not be included in the design of facilities unless required by the  
232 FAA. Lightning arresters and beacons shall be included when calculating the height  
233 of facilities such as towers, lattice towers and monopoles.

234 F. No advertising shall be placed on telecommunications antennas or other equipment.

235 G. All facilities shall be designed to be resistant to and minimize opportunities for  
236 unauthorized access, climbing, vandalism, graffiti, and other conditions that would  
237 result in hazardous conditions, visual blight, or attractive nuisances. The Zoning  
238 Officer or Zoning Adjustments Board may require the provision of warning signs,  
239 fencing, anti-climbing devices, or other techniques to prevent unauthorized access  
240 and vandalism when, because of their location and/or accessibility, antenna facilities  
241 have the potential to become an attractive nuisance. The design of the fencing and  
242 other access control devices shall be subject to design review.

243 H. Where appropriate and directly related to the applicant's placement, construction, or  
244 modification of wireless telecommunications facilities, the applicant shall maintain  
245 and enhance existing landscaping on the site, including trees, foliage and shrubs,  
246 when used for screening unless the Design Review Planner or Design Review  
247 Committee approves appropriate replacement landscaping. Additional landscaping

- 248 shall be planted as needed to minimize the visual impact of the facility and, when  
249 feasible, to block the line of sight between facilities and adjacent residential uses  
250 and residentially zoned properties. The Design Review Planner or Design Review  
251 Committee shall determine the appropriate minimum size of new trees and shrubs.
- 252 I. Façade-mounted equipment, not including any required screening, shall not project  
253 more than 18 inches from the face of the building or other support structure unless  
254 specifically authorized by the Zoning Officer or the Zoning Adjustments Board.
- 255 J. In order of preference, ancillary support equipment for facilities shall be located  
256 either within a building or structure, on a screened roof top area or structure, or in a  
257 rear yard if not readily visible from surrounding properties and the public right of way,  
258 unless the Zoning Officer or Zoning Adjustments Board finds that another location is  
259 preferable under the circumstances of the application.
- 260 K. Above ground and partially buried ancillary equipment, including support pads,  
261 cabinets, shelters, and buildings, shall be located where they will be the least visible  
262 from surrounding properties and the public right of way and shall be designed to be  
263 architecturally compatible with surrounding structures and/or screened using  
264 appropriate techniques to camouflage, disguise, and/or blend into the environment  
265 including landscaping, color, and other techniques to minimize their visual impact. If  
266 the Zoning Officer determines that an equipment cabinet is not or can not be  
267 adequately screened from surrounding properties or from public view or  
268 architecturally treated to blend in with the environment, the equipment cabinet shall  
269 be placed underground or inside the existing building where the antenna is located  
270 unless the Zoning Officer or Zoning Adjustments Board finds that such placement is  
271 not feasible or consistent with the objectives of this Chapter and other applicable  
272 requirements.
- 273 L. No telecommunications antenna or ancillary support equipment shall be located  
274 within any setback or between the face of a building and a public right of way without  
275 approval of a Use Permit except for facilities that are completely subterranean or  
276 Microcell facilities, the latter of which may be approved with an Administrative Use  
277 Permit.
- 278 M. When antennas are co-located, the City may limit the number of antennas with  
279 related equipment and providers to be located at any site and adjacent sites in order  
280 to prevent negative visual impacts associated with multiple facilities. Architectural  
281 and other camouflaging treatment shall be coordinated between all users on each  
282 site.
- 283 N. At the time of modification or upgrade of facilities, existing equipment shall, to the  
284 extent feasible, be replaced with equipment that reduces visual and noise impacts  
285 as feasible.
- 286 O. Proposed facilities shall not reduce the number of available parking spaces below  
287 the amount required pursuant to the Zoning Ordinance.

288 **Section 23C.17.080 Operation and Maintenance Standards**

- 289 All wireless telecommunication facilities shall at all times comply with the following  
290 operation and maintenance standards. Failure to comply shall be considered a violation  
291 of conditions of approval subject to enforcement pursuant to provisions of this Chapter.
- 292 A. Each owner or operator of a wireless telecommunications facility shall provide  
293 signage identifying the name and phone number of a party to contact in event of an  
294 emergency. The design, materials, colors, and location of signs shall be subject to  
295 design review. [Contact information shall be kept current.](#)
- 296 B. Wireless telecommunications facilities and related equipment, including lighting,  
297 fences, shields, cabinets, and poles, shall be maintained in good repair, free from  
298 trash, debris, litter and graffiti and other forms of vandalism, and any damage from  
299 any cause shall be repaired as soon as reasonably possible so as to minimize  
300 occurrences of dangerous conditions or visual blight. Graffiti shall be removed from  
301 any facility or equipment as soon as practicable, and in no instance more than forty-  
302 eight (48) hours from the time of notification by the city.
- 303 C. The owner or operator of a wireless telecommunications facility shall be responsible  
304 for maintaining landscaping in accordance with the approved landscape plan and for  
305 replacing any damaged or dead trees, foliage, or other landscaping elements shown  
306 on the approved plan. Amendments or modifications to the landscape plan shall be  
307 submitted to the Zoning Officer for approval.
- 308 D. Each wireless telecommunications facility shall be operated in a manner that will  
309 minimize noise impacts to surrounding residents and persons using nearby parks,  
310 trails, and similar recreation areas. Except for emergency repairs, testing and  
311 maintenance activities that will be audible beyond the property line shall only occur  
312 between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding  
313 holidays. All air conditioning units and any other equipment that may emit noise that  
314 would be audible from beyond the property line shall be enclosed or equipped with  
315 noise attenuation devices to the extent necessary to ensure compliance with  
316 applicable noise limitations under Chapter 13.40. Backup generators shall only be  
317 operated during periods of power outages or for testing. At no time shall equipment  
318 noise from any source exceed the standards specified in the Berkeley Community  
319 Noise Ordinance (BMC Chapter 13.40).
- 320 E. All wireless telecommunications facilities providing service to the government or the  
321 general public shall be designed to meet the following requirements:
- 322 1. The exterior walls and roof covering of all above ground equipment shelters and  
323 cabinets shall be constructed of materials rated as nonflammable in the Berkeley  
324 Building Code.
  - 325 2. Openings in all above ground equipment shelters and cabinets shall be protected  
326 against penetration by fire and windblown embers to the greatest extent feasible.
  - 327 3. Material used as supports for antennas shall be fire resistant, termite proof, and  
328 subject to all applicable requirements of the Uniform Building Code.
  - 329 4. Telecommunications antenna towers shall be designed to withstand forces  
330 expected during earthquakes to the extent feasible building-mounted facilities  
331 shall be anchored so that a quake does not dislodge them or tip them over. All



332 equipment mounting racks and attached equipment shall be anchored so that a  
333 quake would not tip them over, throw equipment off its shelves, or otherwise  
334 damage equipment.

335 5. All connections between various components of the wireless telecommunications  
336 facility and necessary power and telephone lines shall, to the greatest extent  
337 feasible, be protected against damage by fire, flooding, and earthquake.  
338 Reasonable measures shall be taken to keep wireless telecommunication  
339 facilities in operation in the event of a natural disaster.

340 F. Vehicle and personnel access to sites for maintenance and repairs shall not be from  
341 residential streets or adjacent residential properties to the maximum extent possible.

342 **Section 23C.17.085 Public Information Requirements**

343 A. The Planning and Development Department shall maintain a map and inventory of  
344 all existing and proposed wireless telecommunication sites, which shall be available  
345 to members of the public and other interested parties for inspection.

346 B. The inventory shall, at a minimum, include the following information:

- 347 1. Address of site;
- 348 2. Number, type, power rating, and frequency range of all antennas at the site;
- 349 3. Name of telecommunications carrier owning, operating, or leasing each antenna  
350 at the site;
- 351 4. Date of most recent certification.

352 **Section 23C.17.090 Requirement for Certification of Facilities**

353 A. No wireless telecommunications facility or combination of facilities shall at any time  
354 produce power densities that exceed the FCC's limits for electric and magnetic field  
355 strength and power density for transmitters. In order to ensure continuing  
356 compliance with all applicable emission standards, all wireless telecommunications  
357 facilities shall submit reports as required by this section. The City may require, at  
358 the operator's expense, independent verification of the results of any analysis. If an  
359 operator of a telecommunications facility fails to supply the required reports or fails  
360 to correct a violation of the Federal Communications Commission standard following  
361 notification, the Use Permit is subject to modification or revocation by the Zoning  
362 Adjustments Board following a public hearing.

363 1. Within forty five (45) days of initial operation or modification of a  
364 telecommunications facility and every three years thereafter, the operator of each  
365 telecommunications antenna shall submit to the Zoning Officer written  
366 certification by an approved engineer that the facility's radio frequency emissions  
367 are in compliance with the approved application and any required conditions. The  
368 engineer shall measure the radio frequency radiation of the approved facility and  
369 determine if it meets the FCC requirements. A report of these measurements and  
370 the engineer's findings with respect to compliance with the FCC's Maximum  
371 Permissible Exposure (MPE) limits shall be submitted to the Zoning Officer. If the

372 report shows that the facility does not comply with applicable FCC requirements,  
373 the owner or operator shall cease operation of the facility until the facility  
374 complies with, or has been modified to comply with, this standard. Proof of  
375 compliance shall be a certification provided by the engineer who prepared the  
376 original report. The City may require, at the applicant's expense, independent  
377 verification of the results of the analysis.

378 2. Prior to January 31 of every year, an authorized representative for each wireless  
379 carrier providing service in the City of Berkeley shall provide written certification  
380 to the City that each facility is being operated in accordance with the approved  
381 local and federal permits and shall provide the current contact information.

382 2.3. Once every two years, at the operator's expense, the City may conduct, or  
383 retain an approved engineer to conduct, an unannounced spot check of the  
384 facility's compliance with applicable FCC radio frequency standards.

385 3.4. In the event of a change in the FCC's Maximum Permissible Exposure  
386 (MPE) limits for electric and magnetic field strength and power density for  
387 transmitters, the operator of each wireless telecommunications facility shall be  
388 required to submit to the Zoning Officer written certification by an approved  
389 engineer of compliance with applicable FCC radio frequency standards within 90  
390 days of any change in applicable FCC radio frequency standards or of any  
391 modification of the facility requiring a new submission to the FCC to determine  
392 compliance with emission standards. If calculated levels exceed 50% of the  
393 FCC's MPE limits, the operator of the facility shall hire an approved engineer to  
394 measure the actual exposure levels. If calculated levels are not in compliance  
395 with the FCC's MPE limit, the operator shall cease operation of the facility until  
396 the facility is brought into compliance with the FCC's standards and all other  
397 applicable requirements. A report of these calculations, required measurements,  
398 if any, and the engineer's findings with respect to compliance with the current  
399 MPE limits shall be submitted to the Zoning Officer.

400 4.5. If the Zoning Officer at any time finds that there is good cause to believe  
401 that a telecommunications antenna is not in compliance with applicable FCC  
402 radio frequency standards, he/she may require the operator to submit written  
403 certification that the facility is in compliance with such FCC standards.

404 B. The owner or operator of any wireless telecommunications facility that was approved  
405 by the City before January 17, 2002 shall submit to the Zoning Officer, within six (6)  
406 months from the date of notification, written certification by an approved engineer  
407 that the facility's radio frequency emissions are in compliance with the approved  
408 application and any required conditions. The engineer shall measure the radio  
409 frequency radiation of the approved facility and determine if it meets the FCC  
410 requirements. If the report shows that the facility does not comply with applicable  
411 FCC requirements, the owner or operator shall cease operation of the facility until  
412 the facility is brought into compliance. In order to assure the objectivity of the  
413 analysis, the City may require, at the applicant's expense, independent verification of  
414 the results of the analysis.

- 415 C. Any facility that was approved by the City prior to January 17, 2002, and which does  
416 not comply with this chapter on the date of its adoption shall be considered a lawful  
417 non-conforming use provided that the owner or operator submits the information  
418 required in subsection B of this section. A lawful non-conforming personal wireless  
419 service facility shall be subject to the requirements of Chapter 23C.04 except to the  
420 extent that they are modified herein.
- 421 D. Failure to submit the information required in this section will be considered a  
422 violation of the Zoning Ordinance. Any facility found in violation may be ordered to  
423 terminate operations by the Zoning Adjustments Board following a duly noticed  
424 public hearing.

425 **Section 23C.17.100 Findings Required for Approval**

- 426 A. No wireless telecommunications facilities shall be located in any zoning district  
427 unless the Zoning Adjustments Board or the Zoning Officer approves a Use Permit  
428 or Administrative Use Permit pursuant to the findings set forth in this Section and in  
429 Sections 23B.28.050.A and 23B.32.040.A, as applicable. However, a finding under  
430 Sections 23B.28.050.A and 23B.32.040.A shall not be based on aesthetic impacts if  
431 the proposed facility would not be readily visible, or on any other matter that the City  
432 is prohibited from considering by the Telecommunications Act of 1996.

- 433 1. The Zoning Officer may approve an Administrative Use Permit for microcell  
434 facilities in any zoning district and for ~~new wireless telecommunications facilities~~  
435 ~~in the C-2, MU-LI, M or MM districts, and~~ additions or modifications to existing  
436 sites in non-residential zoning districts.
- 437 2. All other new or modified wireless telecommunications facilities shall require the  
438 approval of a Use Permit by the Zoning Adjustments Board except as provided in  
439 Section 23.17.050D.

440 ~~Notwithstanding anything to the contrary in this Title, the findings required by Sections~~  
441 ~~23B.28.050.A and 23B.32.040.A are not required for wireless telecommunication~~  
442 ~~facilities.~~

- 443 B. In order to approve any Use Permit or Administrative Use Permit under this chapter,  
444 the Zoning Adjustments Board or the Zoning Officer must make the following  
445 findings:

- 446 1. that the proposed project is consistent with the general requirements of this  
447 chapter and any specific requirements applicable to the proposed facility;  
448 2. that the proposed antenna or related facility, operating alone and in conjunction  
449 with other telecommunications facilities will comply with all applicable state and  
450 federal standards and requirements; and either
- 451 a. will not be readily visible; or
- 452 b. will be readily visible, but it is not feasible to incorporate additional measures  
453 that would make the facility not readily visible.

454 ~~To approve a Use Permit to allow establishment of a wireless telecommunication facility~~  
455 ~~in a district other than the C-2, MU-LI, M or MM districts, the Zoning Adjustments Board~~  
456 ~~must find~~

457 3. that the facility is necessary to prevent or fill a significant gap in coverage or  
458 capacity shortfall in the applicant's service area, and is the least intrusive means  
459 of doing so. The findings in this subsection are not required for microcell facilities.

460 4. that the wireless carrier is in compliance with Section 23C. 17.090 A1 and 2 of  
461 this ordinance.

462 D.C. The Zoning Adjustments Board or the Zoning Officer may approve establishment  
463 of a satellite dish or parabolic antenna exceeding 39 inches in diameter, only after  
464 finding that a smaller or different antenna cannot feasibly accomplish the provider's  
465 technical objectives and that the facility will not be readily visible.

466 E.D. All findings must be based on substantial information in the record such as,  
467 where required, technical analysis by an approved radio frequency engineer,  
468 calculations by a State-licensed structural engineer, or other evidence.

#### 469 **Section 23C.17.105 Appeals**

470 Notwithstanding anything to the contrary in Chapter 23B.32, when a decision or action  
471 of the Zoning Adjustment Board under this Chapter is appealed to the City Council, the  
472 Council may affirm the decision or set it for hearing before the Council, but may not  
473 remand it back to the Board more than one time.

#### 474 **Section 23C.17.110 Cessation of Operations**

475 A. Within thirty (30) days of cessation of operations of any wireless telecommunications  
476 facility approved pursuant to this chapter, the operator shall notify the Zoning Officer  
477 in writing. The permit for said wireless telecommunications facility shall be deemed  
478 lapsed and of no further effect six (6) months thereafter unless:

479 1. The Zoning Officer has determined that the same operator resumed operation  
480 within six (6) months of the notice; or

481 2. The City has received an application to transfer the permit to another operator.

482 B. No later than thirty (30) days after a permit has lapsed under the preceding  
483 subsection, the operator shall remove all wireless telecommunication facilities from  
484 the site. If the operator fails to do so, the property owner shall be responsible for  
485 removal, and may use any bond or other assurances provided by the operator  
486 pursuant to the requirements of Section 23C.17.050 to do so. If such facilities are  
487 not removed, the site shall be deemed to be a nuisance pursuant to Section 23B.64  
488 and the City may call the bond to pay for removal.

489 C. Failure to inform the Zoning Officer of cessation of operations of any existing facility  
490 shall constitute a violation of the Zoning Ordinance and be grounds for:

491 1. Prosecution;

492 2. Revocation or modification of the permit;

- 493 3. Calling of any bond or other assurance secured by the operator pursuant to the  
494 requirements of Section 23C.17.050; and/or  
495 4. Removal of the facilities.
- 496 D. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering  
497 a transfer of ownership of an already approved facility, shall provide written  
498 notification to the Zoning Officer and request transfer of the existing Use Permit. The  
499 Zoning Officer may require submission of any supporting materials or documentation  
500 necessary to determine that the proposed use is in compliance with the existing Use  
501 Permit and all of its conditions including, but not limited to, statements, photographs,  
502 plans, drawings, models, and analysis by a State-licensed radio frequency engineer  
503 demonstrating compliance with all applicable regulations and standards of the  
504 Federal Communications Commission and the California Public Utilities  
505 Commission. If the Zoning Officer determines that the proposed operation is not  
506 consistent with the existing Use Permit, he/she shall notify the applicant who may  
507 revise the application or apply for modification to the Use Permit pursuant to the  
508 requirements of Section 23B.56.

509 **~~Section 23C.17.120 Violations~~**

510 ~~Notwithstanding anything to the contrary in this Code a violation of this Chapter shall not~~  
511 ~~be charged as a misdemeanor or an infraction, but shall be subject only to~~  
512 ~~administrative citation under Chapter 1.28 or revocation or nuisance abatement under~~  
513 ~~Chapter 23B.60 or 23B.64.~~