

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING CHAPTER 19.27 (ANTENNAS AND OTHER WIRELESS COMMUNICATION FACILITIES) OF TITLE 19 OF THE COMMERCE MUNICIPAL CODE BY REPEALING AND REVISING SECTION 19.27.030 (ANTENNAS REQUIRING CONDITIONAL USE PERMIT), AND ADDING SECTION 19.27.100 (WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY) AND SECTION 19.27.110 (DESIGN GUIDELINES FOR SMALL WIRELESS FACILITIES)

WHEREAS, Section 253 of the Federal Telecommunications Act of 1996 (“Telecom Act”) (47 U.S. Code § 253) recognizes “the authority of ... local government to manage the public rights-of-way,” provided that local regulation may not effectively prohibit a company’s ability to provide telecommunications service; and

WHEREAS, Section 253(c) of the Telecom Act preserves the authority of State or local government to “require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government”; and

WHEREAS, Section 332(c)(7) of the Telecom Act prohibits local regulation that “unreasonably discriminate among providers of functionally equivalent services”; and

WHEREAS, Article XI, Section 9 of the California Constitution allows cities to establish conditions and regulations over the use of the public right-of-way to supply utility services; and

WHEREAS, California Government Code sections 37350 et seq., provides that a city may purchase, lease, receive, hold, enjoy, and control its property for the common benefit; and

WHEREAS, California Public Utilities Code Section 7901 and Section 7901.1 authorizes telephone corporations to construct “telephone lines along and upon any public road or highway” within California and “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway” subject to the City’s reasonable control over time, place, and manner, which applies to all entities in an equivalent manner”; and

WHEREAS, significant changes in Federal and State law that affect local authority over Wireless Communications Facilities (WCFs) and Small Wireless Facilities (SWFs) have occurred, including but not limited to the following:

- On November 18, 2009, the Federal Communications Commission (FCC) adopted a declaratory ruling FCC 09-99 (the 2009 Shot Clock), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409"), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- On October 17, 2014, the FCC adopted a report and order FCC 14-153 that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established a deemed approval remedy for eligible facility applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- On October 9, 2015, the State of California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- On August 2, 2018, the FCC adopted a Third Report and Order and Declaratory Ruling FCC 18-111 that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- On September 26, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order FCC 18-133 in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment ("FCC Third Order") that, among other things, (a) creates a new regulatory classification for small wireless facilities (SWFs); (b) requires State and local governments to provide all necessary approvals or deny the applications for SWFs within 60 days or 90 days for existing structures and new structures respectively; (c) establishes that "fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs, and are non-discriminatory"; (d) provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and (e) that local aesthetic requirements "are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance"; and

WHEREAS, given the rapid and significant changes in Federal and State law and the significant adverse consequences for noncompliance, the City Council desires to amend Section 19.27.030 entitled Antennas Requiring Conditional Use Permit, and add 19, Section 19.27.100 of Municipal Code entitled "Wireless Telecommunications

Facilities In The Public Right-Of-Way” and Section 19.27.110 entitled Design Guidelines for Small Wireless Facilities, to establish guidelines and processes to regulate the deployment of SWFs in the public right-of-way; and

WHEREAS, a notice of public hearing was published in Los Cerritos Community News, a newspaper of general circulation on June 26, 2020; and

WHEREAS, the City Council held a duly noticed public hearing on July 7, 2020 on the Ordinance, reviewed and considered the Agenda Report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the Agenda Report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

SECTION 2. The Ordinance is consistent with the City’s General Plan, Municipal Code, Zoning Code and applicable Federal and State law.

SECTION 3. The Ordinance will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 4. The project is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3), Review of Exemption, since it can be seen with certainty that there is no possibility that the proposed action in question has the potential to have a significant adverse effect on the environment.

SECTION 5. Section 19.27.030 of Chapter 19.27 of the Commerce Municipal Code is hereby repealed and replaced in its entirety to read as follows:

19.27.030 - Antennas Requiring Conditional Use Permit.

Building or ground-mounted cellular, Personal Communications Service ("PCS"), or other wireless antenna shall be considered a public utility use subject to a conditional use permit review and approval, as specified in Chapter 19.39, Division 7 of this Title 19. Exempted from conditional use permit review and approval is "any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station" under Section 6409(a) of the Spectrum Act (codified at 47 U.S.C. 1455). Such modifications are covered by Section 19.27.090 of this Chapter. Also exempted from conditional use permit review and approval are any applications for Small Wireless Facilities in the public right-of-way as defined by Section 1.6002(l) of Subpart U, of Part 1, of Title 47 of the

Code of Federal Regulations. The process for applying for a Small Wireless Facilities Permit in the public right-of-way shall be governed by Sections 19.27.100 and 19.27.110 of this Chapter.

SECTION 6. Section 19.27.100 of Chapter 19.27 of the Commerce Municipal Code is hereby added to read as follows:

19.27.100. Wireless Telecommunication Facilities in the Public Right-Of-Way.

A Small Wireless Facility Permit from the Public Works Department shall be required for any Small Wireless Facility and associated work in the public right-of-way. All applicable permit and inspection fees shall be established by resolution of the City Council.

SECTION 7. Section 19.27.110 of Chapter 19.27 of the Commerce Municipal Code is hereby added to read as follows:

19.27.110. Design Guidelines for Small Wireless Facilities.

The City Council shall adopt by resolution standards and guidelines regulating the design of Small Wireless Facilities (as defined by Section 1.6002(l) of Subpart U, of Part 1, of Title 47 of the Code of Federal Regulations) deployed in the public right-of-way in the City of Commerce. The Director of Public Works, in consultation with the City Engineer, shall have the authority to implement rules and promulgations to interpret and implement the standards and guidelines, as well as develop, implement, or modify any policies, regulations, conditions, forms, or documents necessary to regulate Small Wireless Facilities in the public right-of-way.

SECTION 8. If any provision of the Commerce Municipal Code or appendices thereto are inconsistent with the provisions of the Ordinance, this Ordinance shall control to the extent allowable by law and shall apply only to the extent applicable to wireless facilities in the public right-of-way.

SECTION 9. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid, unconstitutional, or superseded by State or Federal law, by the decision of a court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion shall be severable and shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Commerce hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 10. Should any provision of this Ordinance differ from State or Federal regulations, the State and Federal regulations will supersede.

SECTION 11. The City Clerk shall attest to the adoption of this ordinance and shall cause the same to be published in a newspaper of general circulation within 15 days after its passage in accordance with Government Code section 36933. This Ordinance shall take effect 30 days after its passage pursuant to Government Code section 36937.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2020.

Ivan Altamirano, Mayor

ATTEST:

Lena Shumway, City Clerk