ORDINANCE NO. 621

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES WITHIN THE CITY'S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION (FCC) RULING.

WHEREAS, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, significant changes in federal and state law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

i. On November 18, 2009, the Federal Communications Commission ("FCC') adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for state and local governments to act on applications for WCFs.

ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that state and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.

iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such 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.

iv. On October 9, 2015, 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.

v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).

vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities ("SWFs"), requires state and local governments to process applications for SWFs within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and,

WHEREAS, in addition to the changes described above, new federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.

ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the "Streamline Small Cell Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the applicable 2009 Shot Clock; and,

WHEREAS, given the rapid and significant changes in federal and state law, the actual and effective prohibition on moratoria to amend local policies in response to such changes, and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to repeal and replace Chapter 12.18 of the Rancho Palos Verdes Municipal Code, entitled "Chapter 12.18 - Wireless Telecommunications Facilities in the Public Right-Of-Way" (the "Ordinance") to allow greater flexibility and responsiveness to the new federal and state laws while still preserving the City's traditional authority to the maximum extent practicable; and,

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1: The City Council of the City of Rancho Palos Verdes hereby makes the following findings:

A. The above recitals are true and correct and incorporated herein by this reference.

B. It is the intent and purpose of this Ordinance that Chapter 12.18 (Wireless Telecommunications Facilities in the Public Right-Of-Way) of the Rancho Palos Verdes Municipal Code is repealed and replaced to update the regulatory framework and standards for permitting wireless facilities, including small wireless facilities (SWF), within the City's public right-of-way in accordance with the recent Federal Communications Commission (FCC) ruling.

Section 2: Section 12.18 of the Rancho Palos Verdes Municipal Code is being repealed and replaced as shown in Attachment A.

Section 3: CEQA Exemption. The proposed ordinance is not defined as a "project" based on the definition provided in Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The ordinance creates an administrative process to process requests for wireless facilities in the PROW and the City's discretion with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries.

Alternatively, the ordinance is exempt from CEQA because the City Council's adoption of the ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would further be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the PROW and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

Section 4: Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 5: Certification and Posting. The City Clerk shall cause this Ordinance to be posted in three (3) public places in the City within fifteen (15) days after its passage, in accordance with the provisions of Section 36933 of the Government Code. The City Clerk shall further certify to the adoption and posting of this Ordinance, and shall cause

this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the Council of this City.

Section 6: Effective Date. This Ordinance shall go into effect on the 31st day after its passage.

Section 7: Any challenge to this Ordinance, and the findings set forth therein, must be filed within the 90 day statute of limitations set forth in Code of Civil Procedure §1094.6 and Section 17.86.100(B) of the Rancho Palos Verdes Municipal Code.

PASSED, APPROVED AND ADOPTED this 16th day of April, 2019.

Mayor

Attest:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss
CITY OF RANCHO PALOS VERDES)

I, EMILY COLBORN, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. 621 passed first reading on April 2, 2019, was duly adopted by the City Council of said City at a regular meeting thereof held on April 16, 2019, and that the same was passed and adopted by the following roll call vote:

AYES: Alegria, Brooks, Cruikshank, Dyda and Mayor Duhovic
NOES: None
ABSENT: None
ABSTAIN: None

City Clerk

Ordinance No. 621
Attachment A
Rancho Palos Verdes Municipal Code Section 12.18
Proposed Code Language

CHAPTER 12.18 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

12.18.010 - PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way ("PROW") in the City for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the City consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission ("FCC") and California Public Utilities Commission ("CPUC"), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules and regulations and this chapter, the laws, rules and regulations shall control.

12.18.020 - DEFINITIONS.

"Accessory equipment" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, vaults, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.

"Antenna" means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. "Antenna" is specific to the antenna portion of a wireless telecommunications facility.

"Antenna array" shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a

vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

“Approval authority” means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications.

“Arterial road” means a road designed primarily for long-distance travel with high traffic capacity and low accessibility from neighboring roads and is not intended to be a residential street; however, some older arterial streets do provide direct access to residential units. Arterials are typically characterized by both two-lane and four-lane roadways, and collects traffic from collector roads. The term “arterial road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without

wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“City” means the City of Rancho Palos Verdes.

“Code” means the Rancho Palos Verdes Municipal Code.

“Collector road” means a road designed primarily as a connection between local roads and arterials that serve moderate to low traffic capacity and high accessibility from local roads. The term “collector road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Collocation” bears the following meanings:

1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d).)

“COW” means a “Cell on Wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

“Concealed” or “concealment” means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) façade or rooftop mounted

pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

“Distributed Antenna System” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.

“FCC Shot Clock” means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time. The shot clock shall commence on “day zero,” which is the day the WTFP application is submitted.

“Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:

1. Collocation of new transmission equipment;

2. Removal of transmission equipment;

3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or

4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

“Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

“Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.

“Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or permitting process, or under another applicable state or local regulatory review process,

and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

“Facility(ies)” means wireless telecommunications facility(ies).

“FCC” means the Federal Communications Commission.

“Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.

“Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.

“Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.

“Ministerial permit” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.

“Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

“Mounted” means attached or supported.

“OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.

“Permittee” means any person or entity granted a Wireless Telecommunication Facilities Permit (WTFP) pursuant to this chapter.

“Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

“Planning Director” means the Director Community Development, or his or her designee.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

“Public works director” means the Director of Public Works, or his or her designee.

“Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

“Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.

2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

“RF” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended. The Middle Class Tax Relief and Job Creation Act of 2012 is also reference herein occasionally as the “Spectrum Act”.

“Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

“Small cell network” means a network of small cells.

“Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results in a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than 10 feet, whichever is greater;

2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than 12 feet from the eligible support structure is proposed;

5. It defeats the concealment or stealthing elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.

7. For all proposed collocations and modifications, a substantial change occurs when:

    a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 equipment cabinets;

    b. The proposed collocation or modification would defeat the concealment elements of the support structure; or

    c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

    The thresholds and conditions for a "substantial change" described in this section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

"Support structure" means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

"SWF" means a "small wireless facility" as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:

    a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or

    b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or

    c. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than 3 cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;

5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and

6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

“Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

“Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.

2. Emergency medical care provider-owned and operated telecommunications facilities.

3. Mobile services providing public information coverage of news events of a temporary nature.

4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

“WTFP” means a “Wireless Telecommunications Facility Permit” required by this chapter, which may be categorized as either a Major WTFP or a Minor WTFP.

12.18.030- APPLICABILITY.

A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.

B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive an encroachment permit, when applicable, in order to be considered legal and conforming.

C. This chapter does not apply to the following:

1. Amateur radio facilities;

2. OTARD antennas;

3. Facilities owned and operated by the City for its use or for public safety purposes;

4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the City’s valid exercise of police powers that do not substantially impair franchise contract rights.

5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

12.18.040 - WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:

1. Interpret the provisions of this chapter;

2. Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;

3. Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;

4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;

5. Collect, as a condition of the completeness of any application, any fee established by this chapter;

6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;

7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

8. Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless telecommunication facilities permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;

9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and

10. Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written

decisions and entering into agreements to mutually extend the time for action on an application.

B. Minor Wireless Telecommunications Facilities Permits ("Minor WTFP").

1. A Minor WTFP, subject to the public works director's approval, may be issued for certain wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:

   a. The proposal is determined to be for a SWF; or

   b. The proposal is determined to be an eligible facilities request.

2. In the event that the public works director determines that any application submitted for a Minor WTFP does not meet the permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for planning commission consideration at a public hearing.

3. Except in the case of an eligible facilities request, the public works director may refer any application for a Minor WTFP to the planning director, who shall have discretion to further refer the application to planning commission for consideration at a public hearing. If the planning director determines not to present the Minor WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. None of the exercises of discretion set forth in this subparagraph shall not apply to an eligible facilities request.

C. Major Wireless Telecommunications Facilities Permit ("Major WTFP"). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are not qualified for a Minor WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.

D. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. Building and encroachment permits, and all City standards and requirements therefor, are applicable.

E. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the City permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.18.050 - APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

A. General. The applicant shall submit a paper copy and an electronic copy of any application, amendments, modifications, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, including all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City's jurisdictional and territorial boundaries within the PROWs, in accordance with the provisions of this section.

1. The City requires a pre-application submittal meeting for a Major WTFP. The City does not require a pre-application submittal meeting for a Minor WTFP; however, the City strongly encourages applicants to schedule and attend a pre-application submittal conference with the approval authority for all proposed Minor WTFP projects, and particularly those that involve more than 5 Minor WTFPs.

    a. Pre-submittal conferences do not cause the FCC Shot Clock to begin and are intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

    b. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within 5 working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

    c. Any request for a pre-submittal conference shall be in writing and shall confirm that any drafts to be provided the City at the pre-submittal conference will not be deemed as “submissions” triggering the start of any FCC Shot Clock.

2. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the City a written application on a form prepared by the public works director.

3. Major WTFP applications must be submitted to the public works director at a scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within 5 business days after receipt of a written request therefor. A WTFP application will only be reviewed upon submission of a complete application therefor. A pre-submission appointment is not required for Minor WTFPs.

4. For SWF, applicants may submit up to 5 individual applications for a WTFP in a batch; provided, however, that SWF in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch as described in this chapter, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

5. If the wireless telecommunications facility will also require the installation of fiber, cable, or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable, or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.

B. Application Contents – Minor WTFPs. The content of the application form for facilities subject to a Minor WTFP shall be determined by the public works director in addition to all other information reasonably deemed necessary, but at a minimum shall include the following:

1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.

2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.

3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, details regarding proposed excavation, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying

and describing the distance to the nearest residential dwelling unit and any historical structure within 250 feet of the facility. Before and after 360 degree photo simulations shall be provided.

4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.

5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.

6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.

7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations shall be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.

8. For SWFs, the application shall also contain:

    a. Application Fee. The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.

    b. Construction Drawings. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number, and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables,

wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

c. Site Survey. For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

d. Photo Simulations. The applicant shall submit site photographs and 360 degree photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

e. Project Narrative and Justification. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 12.18.060.

f. RF Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that

term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

g. Public Notice. Prior to deeming the application complete, the applicant shall submit a mailing list and two sets of labels for all properties and record owners of properties within 500 feet of the project location.

h. Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.

i. Site Agreement. For any SWF proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the City and approved by the City Attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.

j. Acoustic Analysis. The applicant shall submit an acoustic analysis prepared and certified by an acoustic engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the following noise regulations:

   i. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;

   ii. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

   The acoustic analysis shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

k. Wind Load Analysis. The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.

l. Environmental Data. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

m. FAA Documentation. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

n. Traffic Control Plan. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

o. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

p. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

q. Master Deployment Plan. A Master Deployment Plan showing the locations of existing and proposed small wireless facilities over the next two years.

9. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the City from complying with any deadline for action on an application or FCC Shot Clock.

C. Application Contents - Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the City's website. The application form for a Major WTFP shall

require the following information, in addition to all other information determined necessary by the public works director:

1. The name, address, and telephone number of the applicant, owner, and the operator of the proposed wireless telecommunication facility.

2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. A full written description of the proposed wireless telecommunications facility and its purpose.

4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:

    a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.

    b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.

    c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).

    d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

    e. Sufficient evidence of the structural integrity of the support structure as required by the City.

5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.

6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal

would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:

a. A meaningful comparative analysis that includes all factual reasons why the proposed location and design deviates from, or is the least compliant means of, or not the least intrusive location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).

b. The study shall include all eligible support structures and/or alternative sites evaluated for the proposed Major WTFP, and why the alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.

c. If a portion of the proposed facility lies within a jurisdiction other than the City's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.

7. Site plan(s) to scale, specifying and depicting the exact location of the proposed wireless telecommunications facility, location, of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.

8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq*., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.

9. An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.

10. Completion of the RF emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting

Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.

14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g., crane).

15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.

16. Certification that applicant is a telephone corporation, or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

17. Evidence that the proposed wireless facility qualifies as a personal wireless services facility.

18. Address labels for use by the City in noticing all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.

19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.

D. Application Fees and Trust Deposits. For all WTFPs, application fee(s) and the establishment of trust deposits to cover outside consultant costs shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable trust deposit.

Reasonable costs of City staff, consultant and attorney time (including that of the City attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.

E. Independent Expert. The public works and/or planning director, as applicable, is authorized to retain on behalf of the City one or more independent, qualified consultant(s) to review any WTFP application at the applicant's expense. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

F. Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information or application conditions required by this section, the public works director is authorized to omit, modify, or add to that request from the City's application form in consultation with the city attorney. Requests for waivers from any application requirement of this section shall be made in writing to the public works director. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.

G. Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed by this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request

prior to the application deemed automatically withdrawn that shows good cause to grant the extension.

H. Waiver of Applications Superseded by Submission of New Project. If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any City hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including FCC Shot Clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.

I. Rejection for Incompleteness. WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.

12.18.060 - REVIEW PROCEDURE.

A. General. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risk to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.

B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions therefor.

C. Findings Required for Approval of a WTFP.

1. Minor WTFP for SWF. For Minor WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve

such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

a. The facility qualifies as a SWF;

b. The facility is not detrimental to the public health, safety, and welfare;

c. The SWF meets applicable requirements and standards of state and federal law;

d. The SWF would not be located on a prohibited support structure identified in this chapter;

e. The facility would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) or locations within 250 feet would be technically infeasible;

f. The meets applicable requirements and design standards for SWF under this chapter, unless the applicant has demonstrated with clear and convincing evidence in the written record that any such standard would be technically infeasible; and

g. All public notices required for the application have been given.

2. Minor WTFP for EFR. For Minor WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

a. That the application qualifies as an eligible facilities request; and

b. That the proposed facility will comply with all generally-applicable laws.

3. Major WTFP. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

a. If applicable, all notices required for the proposed Major WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility;

b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter;

c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure;

d. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way; and,

e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.

D. Noticing. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.

1. Minor WTFP Applications. Within or reasonably about 5 business days of a SWF application being deemed complete, notice of the proposed SWF application shall be mailed by the City to owners and occupants of real property within a 500 foot radius of the proposed SWF site at least 10 days before rendering a decision. Applications qualifying for eligible facilities requests shall not require notice. The notice shall contain:

   a. A general project description and dimensioned, full color photo simulations;

   b. The applicant's identification and contact information as provided on the application submitted to the City;

   c. Contact information for the City's approval authority;

   d. A statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this chapter;

   e. A statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures, and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and

   f. Written public comments shall be received by the approval authority within 10 days of the public notice date.

2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice shall be provided at least 15 days before the public hearing. Public notices shall include color photo simulations from different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least 30 days

prior to the public hearing; such posted simulations shall remain in-place until a final decision, including exhausting all appeal processes, on the application is reached.

E. Notice of Decision. Within 5 days after any decision to grant, approve, deny, or conditionally grant any WTFP application, the public works director or planning director, as applicable, shall provide written notice based on substantial evidence in the written administrative record including the following:

1. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;

2. A general description of the property involved;

3. Information about applicable rights to appeal the decision, costs to appeal, and explanation of how that right may be exercised; and

4. To be given by first class mail to:

   a. The project applicant and property owner;

   b. Any person who submitted written comments concerning the WTFP;

   c. Any person who has filed a written request with the City to receive such notice; and

   d. Any homeowner association on file with the City that has jurisdiction over the WTFP site.

5. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

6. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a WTFP shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

F. Appeals.

1. Minor WTFP Appeals. Any person who receives the Notice of Decision pursuant to subsection 12.18.060(E)(4) may appeal such decision within 5 days of the Notice of Decision date. The appeal will be considered by the Planning Commission within 10 days of filing. The Planning Commission may decide the issues de novo and the written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the

wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of a Minor WTFP decision premised on the environmental effects of radio frequency emissions will not be considered.

2. Major WTFP Appeals. Any person claiming to be adversely affected by a decision of a Major WTFP pursuant to this chapter may appeal such decision as provided in accordance with the appeal provisions in Chapter 17.80 of the RPVMC.

G. Notice of Shot Clock Expiration. The City acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the City written notice of the expiration of any relevant FCC Shot Clock, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to expiration.

12.18.070 – DESIGN AND DEVELOPMENT STANDARDS.

A. SWF Design and Development Standards. SWFs are subject to the design and development standards and conditions of approval set forth herein. The City's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

1. Visual & Other General Standards. SWFs shall be designed in the least visible means feasible and to be compatible with support structure/surroundings.

2. Noise. SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations stated in this chapter.

3. Lights. SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(3) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

4. Landscape Features. SWFs shall not displace any existing landscape features unless: (a) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (b) the applicant submits and adheres to a

landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be performed in accordance to the public works director.

If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant, and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

5. Site Security Measures. SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

6. Signage and Advertisements. All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

   a. Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.

   b. Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.

   c. Use sticker colors that are muted.

d. Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within 30 days of receiving written notification from the City that it is in need of replacing.

7. Compliance with Health and Safety Regulations. All SWFs shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

8. Dimensions and Design. Wireless facilities shall be as small, short, and unobtrusive as possible.

9. Overall Height. SWFs may not exceed either (a) the minimum separation from electrical lines required by applicable safety regulations, plus 4 feet or (b) 4 feet above the existing support structure. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district.

10. Concealment. All antennas and associated mounting equipment, hardware, cables or other connecters must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:

    a. Radio frequency transparent screening;

    b. Approved, specific colors;

    c. Use of non-reflective material(s);

    d. Minimizing the size of the site;

    e. Integrating the installation into existing or replacement utility infrastructure;

    f. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.

    g. Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.

    h. Paint shall be of durable quality.

    i. Materials shall be non-flammable and non-reflective.

j. Each individual antenna may not exceed 3 cubic feet in volume and all antennas may not exceed 6 cubic feet in volume.

k. Accessory Equipment.

11. Installation Preferences. SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short, and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

12. Undergrounded Accessory Equipment. All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and shall not exceed 2 feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

13. Streetlights. Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must:

    a. be located as close to the removed pole as possible;

    b. be aligned with the other existing streetlights; and

    c. include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas shall be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

14. Utility Poles. Applicants that propose to install SWFs on an existing utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm of a wood pole and within the inside of any other pole. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

15. For Replacement Poles and Street Lights. If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.

16. New, Non-Replacement Poles. Applicants that propose to install SWFs on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, and shall comply with the following:

    a. The new pole must actually function for a purpose other than placement of a wireless facility (e.g., street light, utility pole, etc.).

    b. The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.

17. Encroachments Over Private Property. SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.

18. Backup Power Sources. Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

19. Obstructions; Public Safety. SWF and any associated equipment or improvements shall not physically interfere with or impede access to any:

    a. Above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;

    b. Public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;

    c. Above-ground or underground infrastructure owned or operated by any public or private utility agency;

d. Fire hydrant or water valve;

e. Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way;

f. Fire escape.

20. Utility Connections. All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires, and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (a) internal risers or conduits if on a concrete, composite or similar pole; or (b) a cable shroud or conduit mounted as flush to the pole as possible if on a wood utility pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

21. Spools and Coils. To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

22. Electric Meters.

a. SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.

b. Electrical meters, vaults, and fans shall be located underground where feasible.

23. Building-Mounted Small Wireless Facilities.

a. Preferred Concealment Techniques. All applicants must propose new non-tower SWFs that are completely concealed and architecturally integrated into the existing façade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or façades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the

applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).

b. Facade-Mounted Equipment. When SWFs cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve façade-mounted equipment in accordance with this Subsection. All façade-mounted equipment must be concealed behind screen walls and mounted flush to the façade. The approval authority may not approve “pop-out” screen boxes. Except in industrial zones, the approval authority may not approve any exposed façade-mounted antennas, including but not limited to exposed antennas painted to match the façade.

24. Future Modifications. Any modifications to existing facilities or collocations shall not defeat the concealment elements of the existing structure/facility.

25. Standard Conditions of Approval. In addition to the design and development standards stated in this section, all WTFPs issued for a SWF shall be subject to the following conditions:

a. Post-Installation Certification. Within 60 calendar days after the applicant commences full, unattended operations of a SWF approved or deemed-approved, the applicant shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

b. Adverse Impacts on Other Properties. In addition to those requirements stated in this section, the applicant shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by Chapter 17.56 of this code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violate this condition in whole or in part.

c. Inspections; Emergencies. The applicant expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors, or other designees may enter onto the site and inspect the improvements and

equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors, or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The applicant, if present, may observe the City's officers, officials, staff, or other designees while any such inspection or emergency access occurs.

d. Future Undergrounding Programs. If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the SWF is located, the applicant shall underground its equipment except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs installed on utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the applicant's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

e. Electric Meter Upgrades. If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the applicant on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the applicant shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal from the City. Upon removal, the applicant shall restore the affected area to its original condition that existed prior to installation of the equipment.

f. Rearrangement and Relocation. The applicant acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the Public Works Director determines that any City work will require the applicant's SWF located in the PROW to be rearranged and/or relocated, the applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or

relocation. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's SWF within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF without prior notice to applicant when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The applicant shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.18.060(C)(2) have been made are subject to the following, unless modified by the approving authority:

1. WTFP Subject to Conditions of Underlying Permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.

2. No Permit Term Extension. The City granting, or granting by operation of law, of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's granting, or granting by operation of law, of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The City's granting, or granting by operation of law, of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.

    a. The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.

    b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

    c. Wireless telecommunications facilities shall be located consistent with Section 12.18.080 (Location Restrictions) unless an exception is granted.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.

4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.

5. Support Structures.

    a. Pole-Mounted Only. Only pole-mounted antennas (except wood poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.18.080 is granted.

    b. Utility Poles. Wireless telecommunications facilities shall not be located on wood poles unless an exception pursuant to Section 12.18.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or

equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

c. Light Poles. The maximum height of any antenna shall not exceed 4 feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.

d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.

e. Equipment mounted on a support structure shall not exceed 4 cubic feet in dimension.

f. No new guy wires shall be allowed unless required by other laws or regulations.

g. An exception pursuant to Section 12.18.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.

h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:

   i. The new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.

   ii. New support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.

   iii. New support structures shall not adversely impact public view corridors, as defined in Section 17.02.040 of the RPVMC, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.

iv. A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

v. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.

6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the PROW, or cause safety hazards to pedestrians and motorists.

9. Public Facilities. A facility shall not be located within any portion of the PROW interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.

11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

    a. Unless City staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.18.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

    b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory

equipment shall be enclosed within a structure, and shall not exceed a height of 3½ feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.

12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the City to provide screening or to conceal the facility.

13. Signage. No facility shall bear any signs or advertising devices other than certification, warning, or other signage required by law or permitted by the City.

14. Lighting.

a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.

b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under Federal Aviation Administration or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent

properties. Should no lighting be proposed, no lighting study shall be required.

15. Noise.

    a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.

    b. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The public works director or the approving City body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

18. The installation and construction approved by a wireless telecommunications facility permit shall occur within one year after its approval or it will expire without further action by the City.

19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving City body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving City body.

12.18.080 - LOCATION RESTRICTIONS, LOCATION AND STRUCTURAL PREFERENCES, AND EXCEPTIONS.

A. Locations Requirements for SWF.

1. Preface to Location Requirements. Applications that involve lesser-preferred locations or structures as described in subsections 12.18.080(A)(2) and 12.18.080(A)(3) may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible to achieve the operator's service objectives, as supported by clear and convincing evidence in the written record, unless prohibited under this section. Preferred location requirements shall consist of the following:

    a. Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.

    b. When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window.

    c. When choosing locations, choose locations in between occupied buildings rather than immediately adjacent to occupied buildings, and not adjacent to a window.

    d. If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

2. Locations in the Public Rights-of-Way. The City prefers SWF in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

    a. Locations within the City's commercial zoning districts on or along arterial,

    b. Locations within the City's commercial zoning districts on or along collector roads;

    c. Locations within the City's commercial zoning districts on or along local roads,

    d. Locations within the City's institutional zoning districts on or along arterial roads;

    e. Locations within the City's institutional zoning districts on or along collector roads,

    f. Locations within the City's institutional zoning districts on or along local roads,

    g. Locations within residential districts on or along arterial roads;

h. Locations within residential districts on or along collector roads;

i. Any location in any district within 250 feet from any structure approved for a residential use.

3. Support Structures in the Public Rights-of-Way. The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:

a. Existing or replacement streetlight poles;

b. Existing or replacement utility poles;

c. Existing or replacement street sign poles;

d. New, non-replacement streetlight poles;

e. New, non-replacement poles for small wireless facilities.

4. Prohibited Support Structures. The City prohibits SWFs to be installed on the following support structures:

a. Strand-mounted wireless facilities are prohibited.

b. Decorative poles;

c. Traffic signals, cabinets and related devices;

d. Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

e. New, non-replacement wood utility poles.

B. Locations Requiring an Exception for Major WTFPs. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to Subsection C hereof:

1. Public right-of-way within those zones as identified in the General Plan as residential zones;

2. Public right-of-way within public view corridors identified in the General Plan and the Coastal Specific Plan;

C. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an “exception” under this chapter, no such exception shall be granted unless the applicant demonstrates with clear and convincing evidence all the following:

1. The proposed wireless facility qualifies as a personal wireless services facility;

2. The applicant has provided the City with a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.

    a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent wireless telecommunications facilities without the proposed facility, predicted service coverage levels from all adjacent facilities serving applicant with the proposed facility, and predicted service coverage levels from the proposed facility without all adjacent facilities.

    b. In the event the applicant seeks to address service capacity concerns, a written explanation and propagation maps identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

3. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or reasonably available.

4. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).

5. The applicant has demonstrated that strict compliance with any provision in this chapter for a Major WTFP would effectively prohibit the provision of personal wireless services.

D. Scope. The planning commission or public works director, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or public works director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

12.18.090 - OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

A. The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

1. After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or

2. After permittee, owner, operator, or any designated maintenance agent receives notification from the City.

C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City's risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.

D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the

City's defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course

E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in in the permit based on the characteristics of the installation. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City council. Reimbursement shall be paid when the security is posted and during each administrative review.

F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within 7 days of any change.

H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.

2. General dirt and grease;

3. Chipped, faded, peeling, and cracked paint;

4. Rust and corrosion;

5. Cracks, dents, and discoloration;

6. Missing, discolored or damaged artificial foliage or other camouflage;

7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City.

8. Broken and misshapen structural parts; and

9. Any damage from any cause.

I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.

J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

K. Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The City shall give the permittee 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.

M. The permittee shall be responsible for obtaining power to the facility and for the cost of electrical usage.

N. Interference.

1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent

of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee's facilities.

2. The facility shall not damage or interfere in any way with City property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

    a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

    b. Physical Interference. The City shall give the permittee 30 days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.

O. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m. Testing is prohibited on holidays and weekends.

P. Records. The permittee shall maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

Q. Attorney's Fees. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.18.100 - NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.18.110 - NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

A. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.

B. No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the City has given to the applicant notice

pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.

C. The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

12.18.120 - PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the City to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of 10 years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the City's current code requirements for wireless telecommunications facilities.

C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within 1 year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within 30 days following the day construction commenced.

D. Commencement of Operations. The operation of the approved facility shall commence no later than 90 days after the completion of installation, or the WTFP will expire without further action by the City. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.18.130 - CESSATION OF USE OR ABANDONMENT.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 10 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.

C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:

1. Litigation;

2. Revocation or modification of the permit;

3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;

4. Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or

5. Any other remedies permitted under this code or by law.

12.18.140 - REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall within 60 days remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.

B. Revocation. Any WTFP may be amended, suspended, or revoked for violations of the provisions of this Ordinance or any condition of approval. Amendment, suspension, or revocation shall be pursuant to the procedures of Section 17.86.060 of this code, following notice of the violations to the permittee, and a reasonable opportunity to correct.

C. Summary Removal. In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes an immediate dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent

circumstances"), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within 5 business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

D. Removal of Facilities by City. In the event the City removes a wireless telecommunications facility in accordance with nuisance abatement procedures stated in Chapter 8.24 of this code or pursuant to the summary removal procedures of Subsection B, above, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the City due to exigent circumstances.

12.18.150 - EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

12.18.160 - STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

12.18.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

B. Legal nonconforming wireless telecommunications facilities shall, within 10 years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the City can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the City Council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the 10-year amortization period is not reasonable as applied to a particular property, the City Council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

CITY OF RANCHO PALOS VERDES

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF RANCHO PALOS VERDES)

AFFIDAVIT OF POSTING

The undersigned, being first duly sworn, deposes and says:

That at all times herein mentioned, she was and now is the City Clerk of the City of Rancho Palos Verdes;

That on April 17, 2019, she caused to be posted the following document entitled: **ORDINANCE NO. 621, AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES WITHIN THE CITY'S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION (FCC) RULING,** a copy of which is attached hereto, in the following locations:

City Hall
30940 Hawthorne Blvd.
Rancho Palos Verdes

Ladera Linda Community Center
32201 Forrestal Drive
Rancho Palos Verdes

Hesse Park
29301 Hawthorne Blvd.
Rancho Palos Verdes

I certify under penalty of perjury that the foregoing is a true and correct affidavit of posting.

City Clerk