

DIVISION 9 – WIRELESS REGULATIONS

CHAPTER 17.90 – WIRELESS – NEW AND SUBSTANTIALLY CHANGED

Sections.

- 17.90.010 – Purpose.
- 17.90.020 – Applicability.
- 17.90.030 – Exempt Facilities.
- 17.90.040 – Required Approvals and Approval Authority.
- 17.90.050 – Application Requirements.
- 17.90.060 – Site Location Guidelines.
- 17.90.070 – Development Standards.
- 17.90.080 – Notices and Decisions.
- 17.90.090 – Necessary Findings and Limited Exemptions.
- 17.90.100 – Standard Conditions of Approval.
- 17.90.110 – Temporary Wireless Facilities.
- 17.90.120 – Amortization of Nonconforming Wireless Facilities.
- 17.90.130 – Time Periods.
- 17.90.140 – Appeals.

17.90.010 – Purpose.

- A. This Purpose of this Chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Chapter are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City.
- B. This Chapter is also intended to reflect and promote the community interest to:
 - 1. Ensure that the balance between public and private interest is maintained on a case-by-case basis;
 - 2. Protect the City's visual character from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure;
 - 3. Protect and preserve the City's environmental resources; and
 - 4. Promote access to high-quality, advanced telecommunication services for the City's residents, businesses and visitors.

- C. This Chapter is not intended to, nor shall it be interpreted or applied to:
1. Prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services;
 2. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;
 3. Unreasonably discriminate among providers of functionally equivalent services;
 4. Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the Federal Communications Commission's ("FCC's") regulations concerning such emissions;
 5. Prohibit any collocation or modification that the City may not deny under federal or California state law;
 6. Impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or
 7. Otherwise authorize the City to preempt any applicable Federal or State law.

17.90.020 – Applicability.

- A. **Applicable Wireless Facilities.** This Chapter applies to all existing wireless facilities within the City and all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy wireless facilities in the City, whether located or proposed to be located on private property or in the public right-of-way, unless exempted under Section 17.90.030 of this Chapter or governed under Chapter 17.92 (Wireless – Eligible Facilities Requests) of this Title.
- B. **Request for Approval Pursuant to Section 6409.** Any requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") will first be reviewed under Chapter 17.92 (Wireless – Eligible Facilities Requests) of this Title. Qualifying requests for Section 6409 approval will not be subject to this Chapter. To the extent that the applicant's request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for approval under this Chapter.
- C. **Special Provisions for Small Wireless Facilities.** Notwithstanding any other provision in this Chapter, including any exemption under Section 17.90.030 of this Chapter, all small wireless facilities, as defined by the FCC in 47 C.F.R. § 1.6002(1), as may be amended or superseded, are subject to a permit, as specified in a City Council policy adopted by City Council Resolution. All small wireless facilities shall comply with the City Council's policy. If the policy is repealed, an application for a small wireless facility shall be processed pursuant to this Chapter.

17.90.030 – Exempt Facilities.

Notwithstanding the provisions in Subsection 17.90.020(A) of this Chapter, this Chapter shall not be applicable to:

- A. Wireless facilities owned and operated by the City for public purposes;
- B. Wireless facilities installed on City property located outside the public right-of-way;
- C. Wireless facilities installed on City property in the public right-of-way pursuant to a valid master license agreement with the City;
- D. Amateur radio facilities;
- E. OTARD antennas;
- F. Wireless facilities installed completely indoors and intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system);
- G. Wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D; and
- H. Routine maintenance and repair performed on existing wireless facilities.

17.90.040 – Required Approvals and Approval Authority.

- A. **Conditional Use Permit.** A Conditional Use Permit, subject to the Planning Commission's review and approval, in accordance with the procedures and standards found in Chapter 17.123 (Conditional and Minor Use Permits) of this Title, is required for:
 - 1. All new freestanding wireless facilities;
 - 2. All new wireless facilities and collocations, revisions or other changes to existing wireless facilities that require a limited exception pursuant to Section 17.90.090 of this Chapter; and
 - 3. All new wireless facilities and collocations, revisions or other changes to existing wireless facilities not subject to an Administrative Wireless Permit.
- B. **Administrative Wireless Permit.** An Administrative Wireless Permit, subject to the Public Works Department's review and approval for facilities in the public-right-of-way and the Planning Division's review and approval for all other facilities, in accordance with the procedures and standards of this Chapter, is required for:
 - 1. All new wireless facilities and collocations, modifications or other changes to existing wireless facilities located in the public rights-of-way;
 - 2. All new stealth wireless facilities (e.g. building and towers); and
 - 3. All collocations, revisions or other changes to existing stealth facilities (e.g. on existing buildings and towers).

- C. **Temporary Wireless Permit.** A Temporary Wireless Permit, subject to the Public Works Department’s review and approval for facilities in the public-right-of-way and the Planning Division’s review and approval for all other facilities, in accordance with the procedures and standards of Section 17.90.110 of this Chapter, unless deployed in connection with an emergency pursuant to Subsection 17.90.110(B) of this Chapter.
- D. **Other Permits and Regulatory Approvals.** In addition to any Conditional Use Permit, Administrative Wireless Permit, Temporary Wireless Permit or other permit or approval required under this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies. This may include, without limitation, any permits and/or regulatory approvals issued by other City Departments. Furthermore, any permit or approval granted under this Chapter, or deemed granted or deemed approved by law, shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

17.90.050 – Application Requirements.

- A. **Application Required.** The City shall not approve any request for a Conditional Use Permit, Administrative Wireless Permit or Temporary Wireless Permit except upon a duly filed application consistent with this Section and any other written rules the Community Development Director or Public Works Director may establish from time to time in any publicly-stated format.
- B. **Application Content.** All applications for a Conditional Use Permit, Administrative Wireless Permit or Temporary Wireless Permit must include all the information and materials required by the Community Development Director and Public Works Director for the application. In addition, the City Council authorizes the Community Development Director and Public Works Director to do the following:
 - 1. Develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that are found necessary, appropriate or useful for processing any application governed under this Chapter; and
 - 2. Establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as deemed necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.
- C. **Procedures for a Duly Filed Application.** Any application for a Conditional Use Permit or Administrative Wireless Permit will not be considered duly filed unless submitted in accordance with the procedures in this Subsection:
 - 1. Pre-submittal conference:
 - a. Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Planning Division for all proposed projects subject to a

Conditional Use Permit or with the Public Works Department that involve the deployment of more than five (5) facilities in the public right-of-way. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required.

- b. The pre-submittal conference is 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 or existing wireless tower or base station, 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.
- c. 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 may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable.
- d. The City shall use reasonable efforts to provide the applicant with an appointment within five (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.

2. Submittal appointment:

- a. All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit up to five (5) applications per appointment with the Public Works Department for all facilities in the public right-of-way and the Planning Division for all other facilities.
- b. The City shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after receiving a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Community Development Director or Public Works Director prior to the submittal.

- D. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the application was deemed incomplete in a written notice to the applicant. The Community Development Director or Public Works Director, at their discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

E. Peer and Independent Consultant Review:

1. Authorization. The City Council authorizes the Community Development Director and Public Works Director to, at their discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues in connection with any permit application.
2. Scope. The Community Development Director and Public Works Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation:
 - a. Permit application completeness and/or accuracy;
 - b. Pre-construction planned compliance with applicable regulations for human exposure to RF emissions;
 - c. Post-construction actual compliance with applicable regulations for human exposure to RF emissions;
 - d. Whether and to what extent a proposed project will address a gap in the applicant's wireless services;
 - e. Whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist;
 - f. The applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and
 - g. Any other issue identified by the Community Development Director or Public Works Director that requires expert or specialized knowledge. The Community Development Director and Public Works Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.
3. Consultant fees:
 - a. Subject to applicable law, in the event that the Community Development Director and Public Works Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings.
 - b. If the City elects to retain an independent consultant, the City shall collect a fee prior to accepting an application for filing. The amount of the fee collected shall be in accordance with the most recently adopted City Council Resolution.

17.90.060 – Site Location Guidelines.

- A. **Locations.** All applicants must, to the maximum extent feasible, propose new wireless facilities on private property or in the public rights-of-way in locations according to the following preferences, ordered from most preferred to least preferred:
1. City-owned property or structures located outside the public rights-of-way;
 2. City-owned property or structures located in the public rights-of-way;
 3. Manufacturing zoning districts;
 4. Commercial zoning districts;
 5. Multiuse zoning districts;
 6. Public and quazi-public zoning districts; and
 7. Residential zoning districts or uses.
- B. **Preferred Support Structures.** In addition to the preferred locations described in Subsection 17.90.060(A) above, the City also expresses its preference for installations on certain support structures (which include support structures on private property or in the public rights-of-way). The City will take into account whether any more preferred support structures are technically feasible and potentially available. The City's preferred support structures are as follows, ordered from most preferred to least preferred:
1. Collocations with existing building or other support structure-mounted wireless facilities;
 2. Collocations with existing wireless facilities on electric transmission towers;
 3. Collocations with existing freestanding wireless facilities;
 4. New installations on existing buildings or other support structures;
 5. New installations on existing electric transmission towers; and
 6. New freestanding wireless facilities.

17.90.070 – Development Standards.

- A. **Generally Applicable Development Standards.** All new wireless facilities and collocations, modifications or other changes to existing wireless facilities not covered under Section 6409 must conform to the applicable development standards in this Section:
1. **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the natural and/or built environment in a manner consistent and/or compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity. As an illustration and not a limitation, a wireless facility designed to mimic a native tree species or a rock outcrop may be appropriate in an open space or hillside location where other natural elements exist to provide effective camouflaging and/or concealment.

2. Noise. Wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Chapter 8.36 (Noise Control) of the El Monte Municipal Code (EMMC), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district.

The City may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment (such as backup power generators) reasonably likely to exceed the applicable limit. In the event a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part, backup power generators may exceed the applicable noise control standards and regulations to the extent reasonably necessary to operate the facility until the declared emergency is lifted or power is restored to the affected facility.

3. Landscaping. All wireless facilities must include landscape features and a landscape plan when proposed to be placed in a landscaped area. 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 must be performed in accordance with Chapter 17.72 (Landscaping Requirements) of this Title. The City may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this Chapter.
4. Site security measures. Wireless facilities may incorporate reasonable and appropriate site security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft or vandalism. Site security measures must be designed to enhance concealment to the maximum extent possible, such as installing equipment within an enclosure designed to mimic a trash-can corral rather than within a chain link fence. The City may require additional concealment elements as deemed necessary to blend the security measures and other improvements into the natural and/or built environment. The use of barbed wire, razor ribbon, electrified fences or any similar security measures shall be prohibited.
5. Backup power sources. The City may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly disfavors backup power sources installed on the ground or mounted on poles within the public rights-of-way. In no event shall any diesel generator or other similar noise or noxious generated by used within 250 feet of any residentially zoned property; provided, however, the City may approve sockets or other connections used for temporary backup generators.
6. Lighting. Wireless facilities may not include exterior lights other than: (a) as may be required under Federal Aviation Administration, FCC or other applicable governmental regulations; and (b) timed or motion-sensitive lights for security and/or worker safety. All exterior lights permitted or required to be installed must be installed in locations and

within enclosures that mitigate illumination impacts on other properties to the maximum extent feasible.

7. Signage; Advertisements. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with radiofrequency (RF) emissions regulations.
8. Future collocations and equipment. To the maximum extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance.
9. Utilities. All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the maximum extent feasible in conduits large enough to accommodate future collocated wireless facilities. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible.

The City shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost; provided, however, that the Community Development Director or Public Works Director may waive this requirement to the extent the approval of new overhead lines or service drops would amount to a de minimis visual change. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna (i.e. the City strongly prefers the undergrounding of wirelines in lieu of wireless backhauls).

10. Parking and access. Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
11. Compliance with laws. All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions. This includes, without limitation, the California Building Standards Code, General Plan, EMMC and any applicable Specific Plan and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the facility.

B. **Freestanding Wireless Facilities.** In addition to the requirements in Subsection (A) on the previous pages, all new freestanding wireless facilities and collocations, revisions or other changes to existing freestanding wireless facilities not covered under Section 6409 shall conform to the following:

1. Height. Freestanding facilities shall not exceed the applicable height limit established for the subject zoning district or overlay zone.
2. Setbacks. Wireless facilities shall not encroach into any applicable setback for structures in the subject zoning district.
3. Tower-mounted equipment. All tower-mounted equipment shall be mounted to the vertical support structure as close as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat colors subject to approval by the Planning Commission or Planning Division.
4. Ground-mounted equipment; shelters. All ground-mounted equipment shall be concealed underground or within an existing or new structure, opaque fences or other enclosures subject to approval by the Planning Commission or Planning Division. The Planning Division may require additional concealment elements as deemed necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

C. **Building-Mounted Wireless Facilities.** In addition to the requirements in Subsection (A) on the previous pages, all new building-mounted wireless facilities and collocations, modifications or other changes to existing building-mounted wireless facilities not covered under Section 6409 must conform to the following:

1. Height. Building-mounted wireless facilities shall not exceed the applicable height limit established for the subject zoning district or overlay zone, except as permitted in Section 17.60.030 (General Development Standards – Height Exceptions and Restrictions) of this Title.
2. Setbacks. Wireless facilities shall not encroach into any applicable setback for structures in the subject zoning district, except as permitted in Section 17.60.130 (General Development Standards – Yard Encroachments) of this Title.
3. Preferred concealment techniques. All applicants should, to the maximum extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade 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 facades replaced with RF-transparent material and finished to mimic the replaced materials).

Alternatively, when integration with existing building features is not feasible, the applicant should 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, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.

4. Façade-mounted equipment. When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Planning Division may approve facade-mounted equipment in accordance with this Section. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The Planning Division may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure.

The Planning Division shall not approve any exposed facade-mounted antennas, including but not limited to, exposed antennas painted to match the facade. To the maximum extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.

5. Rooftop-mounted equipment. All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The Planning Division may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
6. Ground-mounted equipment; shelters. All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, building interior equipment room, or other enclosures subject to approval by the Planning Division. The City may require additional concealment elements as deemed necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

- D. **Right-of-way Wireless Facilities.** In addition to the applicable requirements in Subsection 17.90.070(A) of this Chapter, all new right-of-way wireless facilities and collocations, modifications or other changes to existing right-of-way wireless facilities not covered under Section 6409 must conform to the following:

1. Concealment. All wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless facilities in the rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoy, hinder, impede or obstruct.
2. Overall height. Wireless facilities in the public rights-of-way may not exceed either of the following:
 - a. The minimum separation from supply lines required by the California Public Utilities Corporation (CPUC) General Order 95, as may be amended or superseded, plus four (4) feet; and/or

- b. Four (4) feet above the height of the existing support structure. To the extent that in the Public Works Director's discretion the four (4) foot height allowance would cause the applicant's wireless facility to be materially incompatible with the overall height or appearance of the surrounding support structures in the public right-of-way, the Public Works Director may require the applicant to propose an alternative design (such as mounting the antenna(s) on the side of the pole) or location to the maximum extent technically feasible.
3. Existing support structures. All wireless facilities in the public right-of-way must be installed on existing above-ground structures (such as light standards or utility poles) whenever possible. The Public Works Director shall not approve any wireless facility proposed to be installed on a traffic control pole unless the Public Works Director finds, in his or her sole discretion, that the traffic control pole has sufficient capacity to support the wireless facility.
4. Replacement support structures. Existing above-ground structures may be replaced with structurally hardened, fitted or reinforced support structures so long as the replacement structure is, in the Public Works Director's discretion, substantially similar to the existing structure to be replaced.
5. New support structures. The Public Works Director shall not approve any new, non-replacement support structures unless:
 - a. The applicant demonstrates that above-ground support structures within the intended service area either do not exist or are not potentially available to the applicant; or
 - b. The Public Works Director specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives in this Chapter than installations on existing structures near the project site. The City shall have the discretion to require that any new support structure must be a streetlight that conforms to the City's streetlight standards and specifications, which the City shall maintain for street illumination and public safety purposes.
6. Undergrounded equipment. To conceal the equipment to the maximum degree feasible, applicants must install all equipment (other than the antenna and any electric meter) underground in any area in which the existing utilities are primarily located underground. In all other areas, applicants shall install all equipment (other than the antenna and any electric meter) underground when the Public Works Director finds that the above-ground equipment would unreasonably interfere with the public's ability to use the right-of-way for uses that include without limitation travel, social, expressive and/or aesthetic uses.

When making a determination on whether to require undergrounded equipment, the Public Works Director shall take into account the presence of existing above-ground utilities. Mere additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement. If an applicant proposes to install a facility in an area in which the existing utilities are primarily located

underground, the Public Works Director shall have the discretion, consistent with Subsections 17.90.070(D)(3) through (D)(5) on the previous pages, to require that the applicant install a new streetlight that conforms to the City's streetlight standards and specifications as the facility support structure.

7. Pole-mounted equipment. All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize the overall visual profile. All pole-mounted equipment and required or permitted signage must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures to the maximum extent feasible. All cables, wires and other connectors must be routed through conduits within the pole whenever possible, and all conduit attachments, cables, wires and other connectors must be concealed from public view to the maximum extent feasible.
 8. Ground-mounted equipment. To the extent that the equipment cannot be placed underground as required, applicants may be permitted to install ground-mounted equipment in a location that does not obstruct pedestrian or vehicular traffic. All ground-mounted equipment must be placed in the least conspicuous location available within a reasonable distance from the pole. The Public Works Director may conditionally approve new or enhanced landscaping to conceal ground-mounted equipment. The City shall not approve a ground-mounted electric meter pedestal or other electric meter enclosure to the maximum extent feasible.
- E. **Administrative Design Guidelines.** The Community Development Director or Public Works Director may develop, and from time to time amend, design guidelines consistent with the generally applicable development standards and any facility-specific development standards to clarify the aesthetic goals and standards in this Chapter. In the event that a conflict arises between the development standards in this Section and the design guidelines, the development standards in this Section shall control.

17.90.080 – Notices and Decisions.

A. General Notice Requirements:

1. Conditional Use Permits shall require a public hearing and mailed notices from the City as outlined in Section 17.123.030 (Conditional and Minor Use Permits – General Procedures) of this Title.
2. Administrative Wireless Permits:
 - a. A public hearing and mailed notices from the City shall not be required.
 - b. The applicant shall post a notice at the project site, a minimum ten (10) days prior to City action on the Administrative Wireless Permit. The notice shall contain the following:
 - i. General explanation of the proposed project;
 - ii. The applicant's identification and contact information as provided on the application submitted to the City; and

- iii. Contact information for the applicable City Department.
 - c. Deemed-Approval Notice. Not more than 30 days before the applicable FCC timeframe for review expires, and in addition to the public notices required in Subsection (A)(2) above and on the previous page, the applicant for an Administrative Wireless Permit must provide a posted notice at the project site that contains:
 - i. A statement the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the City approves or denies the application or the applicant tolls the timeframe for review within the next 30 days;
 - ii. A general explanation of the proposed project;
 - iii. The applicant's identification and contact information as provided on the application submitted to the City; and
 - iv. Contact information for the applicable City Department.
- B. **Deemed Given.** The notices required under Subsection (A)(2) above and on the previous page will be deemed given when the applicant delivers written notice to the Community Development Director or Public Works Director that shows the appropriate notice has been posted at the project site.
- C. **Decisions:**
 1. Conditional Use Permit. The Planning Commission shall make its decision by Resolution. If the entitlement is denied, the findings must contain the reasons for the decision. In addition, the applicant shall be given written instructions on how to file an appeal.
 2. Administrative Wireless Permit. The Community Development Director or Public Works Director shall make his or her decision through a Decision Letter. If the permit is denied, the letter must contain the reasons for the decision and instructions on how to file an appeal.
 3. Timeframe. The Resolution or Decision Letter shall be sent to the applicant within five (5) days after City action or before the FCC Shot Clock expires (whichever occurs first).

17.90.090 – Necessary Findings and Limited Exemptions.

- A. **Necessary Findings for Conditional Use Permit Approval.** In addition to findings outlined in Section 17.123.040 (Conditional and Minor Use Permits – Necessary Findings) of this Title, the Planning Commission shall make the following findings prior to approving or conditionally approving a Conditional Use Permit:
 1. The proposed wireless facility complies with all applicable site location guidelines and development standards in Sections 17.90.060 and 17.90.070 of this Chapter;
 2. The applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions;

3. The applicant has demonstrated a good-faith effort to identify and evaluate more-preferred alternative locations and potentially less-intrusive alternative designs for the proposed wireless facility; and
 4. The applicant has provided the approval authority with a meaningful comparative analysis that shows all more-preferred alternative locations and less-intrusive alternative designs identified in the administrative record are either technically infeasible or unavailable.
- B. Necessary Findings for Administrative Wireless Permit Approval.** The Public Works Director (for facilities in the public right-of-way) or the Community Development Director (for all other facilities) shall make the following findings prior to approving or conditionally approving an Administrative Wireless Permit:
1. The proposed wireless facility complies with all applicable site location guidelines and development standards in Sections 17.90.060 and 17.90.070 of this Chapter; and
 2. The applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions.
- C. Denials Without Prejudice.** Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the City's ability to deny without prejudice any application for a Conditional Use Permit or Administrative Wireless Permit as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in this Chapter, the EMMC or the General Plan.
- D. Limited Exemptions for Personal Wireless Service Facilities.** In the event that an applicant claims that strict compliance with Sections 17.90.060 and 17.90.070 of this Chapter would effectively prohibit their ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition, subject to all of the following:
1. The proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded;
 2. The applicant has provided the Planning Commission with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
 3. The applicant has provided the Planning Commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this Chapter, the EMMC, the General Plan and/or any Specific Plan;
 4. The applicant has provided the Planning Commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and

5. The applicant has demonstrated to the Planning Commission that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.

17.90.100 – Standard Conditions of Approval.

In addition to all other conditions adopted by the approval authority, all Conditional Use Permits and Administrative Wireless Permits shall be automatically subject to the conditions in this Section. The approval authority (or the appellate authority on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Chapter.

- A. **Permit Term.** This permit will automatically expire ten (10) years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, revision or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. Upon an application for permit renewal submitted within one year from the expiration date of this permit, the Community Development Director or Public Works Director may renew this permit for an additional ten (10) year term provided that the permittee's wireless facility is in compliance with all applicable conditions of approval and all applicable provisions in the EMMC that exist at the time of the renewal.
- B. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division, the permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans, as determined by the Community Development Director or Public Works Director. Any material alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other City Departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Community Development Director's or Public Works Director's prior review and approval, who may refer the request to the original approval authority if one of them finds that the requested alteration, revision or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- C. **Build-Out Period.** This permit will automatically expire one year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without

limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Community Development Director or Public Works Director may grant one written extension to a date certain, but not to exceed one additional year, when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

- D. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- E. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the EMMC, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the EMMC, any permit, any permit condition or any applicable law or regulation.
- F. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee 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 the EMMC. 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. The Community Development Director and Public Works Director may issue a stop work order for any activities that violates this condition.
- G. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee 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 permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.

H. **Permittee's Contact Information.** The permittee shall furnish the Community Development Director or Public Works Director with accurate and up-to-date contact information to reach a live person responsible for the wireless facility, which includes without limitation a direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Community Development Director or Public Works Director with updated contact information in the event that the contact information changes.

I. **Indemnification:**

1. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all:
 - a. Damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and
 - b. Other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility.
2. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense.
3. The permittee expressly acknowledges and agrees that 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 promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
4. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.

J. **Performance Bond:**

1. Before the applicable City Department issues any construction or encroachment permit, as applicable, in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Community Development Director or Public Works Director in an amount reasonably necessary to cover the cost to remove

the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal.

2. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws.
 3. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Community Development Director or Public Works Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility and restore any areas affected by the removal work to a standard compliant with applicable laws. In addition, the Community Development Director and Public Works Director may modify this condition to the extent reasonably necessary to comply with any reasonable requirements imposed by the permittee's surety.
- K. **Recall to Approval Authority; Permit Revocation.** The Conditional Use Permit or Administrative Wireless Permit shall be subject to the provisions in Section 17.10.130 (General Regulations – Revocation of Permits) of this Title.
- L. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless 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, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.
- M. **Undergrounded Utilities.** In the event that other electric or communications utilities in the public right-of-way underground their facilities where the permittee's wireless facility is located, and the permittee's wireless facility is located in the public right-of-way, the permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law.
- N. **Electric Meter Removal.** In the event that the electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure in the public right-of-way, the permittee on its own initiative and at its sole cost and expense shall apply to the City for the required encroachment and/or other ministerial permit(s) to

remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.

O. Rearrangement and Relocation:

1. The permittee acknowledges that the City, in its sole discretion and at any time, may:
 - a. Change any street grade, width or location;
 - b. 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
 - c. 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 this permit.
2. In the event that the Public Works Director determines that any City work will require the permittee's wireless facility located in the public right-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation.
3. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility 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 permittee's sole cost and expense.
4. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Public Works Director determines that the City Work is immediately necessary to protect public health or safety.
5. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, the permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any claims in connection with rearranging or relocating the permittee's facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the permittee's facility.

- P. Abandoned Wireless Facilities.** The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements, and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the EMMC. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall

be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

17.90.110 – Temporary Wireless Facilities.

A. **General Requirements for Temporary Wireless Facilities.** Except as provided in Subsection (B) on the following pages, the requirements, procedures and standards in this Section shall be applicable to all applications for a temporary wireless facility.

1. Applications for Temporary Wireless Facilities.
 - a. The Community Development Director shall not approve any temporary wireless facility subject to a Temporary Wireless Permit except upon a duly filed application consistent with this Subsection and any other written application requirements or procedures the Director may publish in any publicly-stated format.
 - b. Applicants for a Temporary Wireless Permit must submit, at a minimum:
 - i. A Temporary Wireless Permit application on the most current form prepared by the Planning Division;
 - ii. A site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures;
 - iii. An RF compliance report in accordance with the City's requirements; and
 - iv. An insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000.00 in coverage per occurrence.
 - c. Applications must be submitted in person to the Planning Division unless the Community Development Director grants written consent to receive an application by mail or electronic means. No pre-submittal conference or appointment is required for a Temporary Wireless Permit application.
2. Administrative review for Temporary Wireless Facilities. After the Planning Division has received a duly filed application for a Temporary Wireless Permit, it shall be reviewed for completeness. After the Planning Division deems the application complete, the Community Development Director shall review the application for conformance with the required findings in Subsection (A)(4) on the following page.
3. Notices. A public hearing, mailed notices or site postings shall not be required for temporary wireless facilities.
4. Required Findings for Temporary Wireless Facilities. The Community Development Director shall make all of the following findings through a Decision Letter prior to approving or conditionally approving a Temporary Wireless Permit:
 - a. The proposed temporary wireless facility will not exceed 50 feet in overall height above ground level unless the Community Development Director finds that

- exceeding the 50-foot overall height limit is necessary to integrate a non-freestanding temporary wireless facility with the underlying support structure;
- b. The proposed temporary wireless facility will be placed as far away from adjacent property lines to the furthest extent as possible, or otherwise in a location that will be least likely to cause adverse impacts on adjacent properties;
 - c. Any excavation or ground disturbance associated with the temporary wireless facility will not exceed two (2) feet below grade;
 - d. The proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes without limitation compliance with maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
 - e. The proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location;
 - f. The proposed temporary wireless facility will be identified with a sign that clearly identifies the following: (i) the site operator; (ii) the operator's site identification name or number; and (iii) a working telephone number answered 24 hours per day, seven (7) days per week by a live person who can exert power-down control over the antennas;
 - g. The proposed temporary wireless facility will be removed within 30 days after the Community Development Director grants the Temporary Wireless Permit, or such longer time as found reasonably related to the applicant's need or purpose for the temporary wireless facility; and
 - h. The applicant has not been denied a Conditional Use Permit for any permanent wireless facility in the same or substantially the same location within the previous 365 days.
5. Decisions. The Community Development Director shall make its decision through a Decision Letter. If the permit is denied (with or without prejudice), the letter must contain the reasons for the decision. In addition, the letter shall include instructions on how to file an appeal.
- B. Temporary Wireless Facilities for Emergencies.** Temporary wireless facilities may be placed and operated within the City without a Temporary Wireless Permit only when a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part. Any temporary wireless facilities placed pursuant to this Section must be removed within 15 days after the date the emergency is lifted. Any person or entity that places temporary wireless facilities pursuant to this Section must send a written notice that identifies the site location and person responsible for its operation to the Community Development Director as soon as reasonably practicable.

17.90.120 – Amortization of Nonconforming Wireless Facilities.

- A. Any non-conforming wireless facilities in existence at the time this Chapter becomes effective must be brought into conformance with this Chapter in accordance with the amortization schedule in this Section. As used in this Section, the "fair market value" will be the construction costs listed on the building permit application for the subject wireless facility and the "minimum years" allowed will be measured from the date on which this Chapter becomes effective. Refer to Table 17.90-1 for the determined fair market value based on minimum years allowed:

Table 17.90-1 – Amortization Period Based on Fair Market Value	
Fair Market Value on Effective Date:	Minimum Years Allowed:
Less than \$50,000	5
\$50,000 to \$500,000	10
Greater than \$500,000	15

- B. The Community Development Director or Public Works Director may grant a written extension to a date certain when the wireless facility owner shows:
 - 1. Good faith effort to cure non-conformance;
 - 2. The application of this Section would violate applicable laws; or
 - 3. Extreme economic hardship would result from strict compliance with the amortization schedule.
 - 4. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Director may not grant any permanent exemption from this Section.
- C. Nothing in this Section is intended to limit any permit term to less than ten (10) years. In the event that the amortization required in this Section would reduce the permit term to less than ten (10) years for any permit granted on or after January 1, 2007, then the minimum years allowed will be automatically extended by the difference between ten (10) years and the number of years since the City granted such permit. Nothing in this Section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

17.90.130 – Time Periods.

- A. **Conditional Use Permits.** Refer to Section 17.123.050 (Conditional and Minor Use Permits – Time Periods) of this Title.
- B. **Administrative Wireless Permit.** The permit shall be valid for 12 months after the date of approval. If the applicant has proceeded in good faith toward the implementation of the Administrative Wireless Permit as determined by the Community Development Director or

Public Works Director, the applicant may request a 12-month extension. The applicant shall submit the request prior to the expiration date. The extension shall be considered by the Community Development Director or Public Works Director within 30 days of the request. No additional extensions shall be permitted.

17.90.140 – Appeals.

- A. **Conditional Use Permits.** Planning Commission decisions are appealable to the City Council. Refer to Section 17.10.100 (General Regulations – Ability to Appeal) of this Title for additional information.
- B. **Administrative Wireless Permits and Temporary Wireless Permit.** The Community Development Director’s and Public Works Director’s decisions are appealable to the City Manager. The City Manager’s decision shall be final. Refer to Section 17.10.100 (General Regulations – Ability to Appeal) of this Title for additional information.

CHAPTER 17.92 – WIRELESS – ELIGIBLE FACILITIES REQUEST (6409)

Sections.

- 17.92.010 – Purpose.
- 17.92.020 – Applicability.
- 17.92.030 – Required Approvals and Approval Authority.
- 17.92.040 – Application Requirements.
- 17.92.050 – Notices, Findings and Decisions.
- 17.92.060 – Standard Conditions of Approval.
- 17.92.070 – Time Periods.
- 17.92.080 – Appeals.

17.92.010 – Purpose.

- A. **Background.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) ("Section 6409"), generally requires that state and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communications Commission ("FCC") regulations interpret this statute and establish procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the state or local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409 applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).
- B. **Findings.** The City Council finds that the overlap between wireless deployments covered under Section 6409 and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. The City Council further finds that a separate permit application and review process specifically designed for compliance with Section 6409 contained in a separate Section devoted to Section 6409 will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to maximum extent possible.
- C. **Intent.** The intent of this Chapter to establish reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and California state law, for collocations and modifications to existing wireless facilities pursuant to Section 6409 and related FCC regulations codified in 47 C.F.R. §§ 1.40001 et seq.

This Chapter is not intended to, nor shall it be interpreted or applied to:

1. Prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services;
2. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;
3. Unreasonably discriminate among providers of functionally equivalent services;
4. Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions;
5. Prohibit any collocation or modification that the City may not deny under federal or California state law;
6. Impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or
7. Otherwise authorize the City to preempt any applicable federal or California state law.

17.92.020 – Applicability.

This Section applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409. However, the applicant may voluntarily elect to seek a Conditional Use Permit or Administrative Wireless Permit subject to the provisions of Chapter 17.90 (Wireless – New and Substantially Changed) of this Title.

17.92.030 – Required Approvals and Approval Authority.

- A. **Section 6409 Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require administrative approval from the City consistent with all valid and enforceable terms and conditions of the underlying use permit or other prior regulatory authorization for the tower or base station (a "Section 6409 Permit").

A Section 6409 Permit shall be subject to the Public Works Director's review and approval the facility is located in the public right-of-way and subject to the Planning Division's review and approval for all other facilities. Each Section 6409 Permit shall be approved, conditionally approved or denied without prejudice pursuant to the standards and procedures contained in this Chapter.

- B. **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this Chapter may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any permits and/or regulatory approvals issued by other

City Departments. Furthermore, any Section 6409 approval granted under this Chapter shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

17.92.040 – Application Requirements.

- A. **Application Required.** The City shall not approve any request for a Section 6409 Permit except upon a duly filed application consistent with this Section and any other written rules the Community Development Director or Public Works Director may establish from time to time in any publicly-stated format.
- B. **Application Content.** All applications for a Section 6409 Permit must include all the information and materials required by the Community Development Director or Public Works Director for the application. In addition, the City Council authorizes the Community Development Director and Public Works Director to do the following:
 - 1. Develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that are found necessary, appropriate or useful for processing a Section 6409 permit. However, the Community Development Director or Public Works Director may not require documentation proving the need or presenting the business case for the proposed modification; and
 - 2. Establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as deemed necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.
- C. **Procedures for a Duly Filed Application.** Any application for a Section 6409 Permit will not be considered duly filed unless submitted in accordance with the procedures in this Subsection:
 - 1. Pre-Submittal Conference:
 - a. Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Planning Division or Public Works Department for all proposed collocations or modifications to any concealed or camouflaged wireless tower or base station. Pre-submittal conferences for all other proposed collocations or modifications are strongly encouraged but not required.
 - b. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, including whether the project qualifies for approval pursuant to Section 6409 or not; any latent issues in connection with the existing wireless tower or base station, 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.

- c. 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 may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable.
 - d. The City shall use reasonable efforts to provide the applicant with an appointment within five (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.
2. Submittal Appointment:
- a. All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit up to five (5) applications per appointment with the Public Works Department for all facilities in the public right-of-way and the Planning Division for all other facilities.
 - b. The City shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after receiving a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Community Development Director or Public Works Director prior to the submittal.
- D. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the application was deemed incomplete in a written notice to the applicant. The Community Development Director or Public Works Director, at his or her discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- E. **Peer and Independent Consultant Review:**
- 1. Authorization. The City Council authorizes the Community Development Director and Public Works Director to, at their discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues in connection with any permit application.
 - 2. Scope. The Community Development Director or Public Works Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation:
 - a. Permit application completeness and/or accuracy;

- b. Pre-construction planned compliance with applicable regulations for human exposure to RF emissions;
 - c. Post-construction actual compliance with applicable regulations for human exposure to RF emissions;
 - d. The applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and
 - e. Any other issue identified by the Community Development Director or Public Works Director that requires expert or specialized knowledge. The Community Development Director or Public Works Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.
3. Consultant Fees:
- a. Subject to applicable law, in the event that the Community Development Director or Public Works Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings.
 - b. If the City elects to retain an independent consultant, the City shall collect a fee prior to accepting an application for filing. The amount of the fee collected shall be in accordance with the most recently adopted City Council Resolution.

17.92.050 – Notices, Decisions and Findings.

- A. **Administrative Review.** The Planning Division or Public Works Department shall administratively review a complete and duly filed application for a Section 6409 Permit and may act on such application without prior notice or a public hearing.
- B. **Decision Notices.** The Community Development Director or Public Works Director shall make his or her decision through a Decision Letter. Such letter shall be sent to the applicant within five (5) days after City action has been taken or before the FCC Shot Clock expires (whichever occurs first). If the permit is denied, the letter must contain the reasons for the decision, a statement that the denial is without prejudice and instructions on how to file an appeal.
- C. **Necessary Findings for Approval.** The Public Works Director (for facilities in the public right-of-way) or the Community Development Director (for all other facilities) shall make the following findings prior to approving or conditionally approving a Section 6409 Permit:
 - 1. The project involves the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - 2. The project does not substantially change the physical dimensions of the existing wireless tower or base station.

- D. **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this Chapter, and consistent with all applicable federal laws and regulations, the Public Works Director (for facilities in the public right-of-way) or the Community Development Director (for all other facilities) may deny a Section 6409 Permit without prejudice, provided one of the following criteria can be met:
1. The project does not meet the findings required in Subsection (C) above and on the previous page;
 2. The project involves the replacement of the entire support structure; or
 3. The project violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.

17.92.060 – Standard Conditions of Approval.

Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the City’s authority to conditionally approve an application for a Section 6409 Permit to protect and promote the public health and safety. In addition to all other conditions adopted by the approval authority, all Section 6409 Permit approvals shall be automatically subject to the conditions in this Section. The Community Development Director or Public Works Director (or the City Manager on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Chapter.

- A. **Permit Term.** The City's grant or grant by operation of law of a Section 6409 Permit approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409 Permit approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for a Section 6409 Permit approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
- B. **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any Section 6409 approval(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409 approvals or the Community Development Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Community Development Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409 approval

when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.

- C. **City's Standing Reserved.** The City's grant of a Section 6409 approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any Section 6409 approval.
- D. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division, the permittee must incorporate this Section 6409 approval, all conditions associated with this Section 6409 approval and the approved photo simulations into the project plans (the "approved plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the approved plans, as determined by the Community Development Director. Any material alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other City Departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Community Development Director's prior review and approval. The Community Development Director may revoke the Section 6409 approval if the Community Development Director finds that the requested alteration, modification or other change causes a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.40001 (b)(7), as may be amended.
- E. **Build-Out Period.** This Section 6409 approval will automatically expire one year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Community Development Director may grant one written extension for up to one year when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- F. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in this Section 6409 approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- G. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409 approval, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable

provision in the EMMC, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the EMMC, any permit, any permit condition or any applicable law or regulation.

- H. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. Undue or unnecessary adverse impacts shall not be interpreted to mean aesthetic impacts that may result from the City's issuance of this Section 6409 approval consistent with applicable law. The permittee 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 hours authorized by the EMMC. 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. The Community Development Director may issue a stop work order for any activities that violates this condition.
- I. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee 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 permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.
- J. **Permittee's Contact Information.** The permittee shall furnish the Community Development Director with accurate and up-to-date contact information to reach a live person responsible for the wireless facility, which includes without limitation a direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Community Development Director with updated contact information in the event that the contact information changes.
- K. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all:
 - 1. Damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this Section 6409 approval;

2. Other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this Section 6409 approval or the wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense; and
 3. The permittee expressly acknowledges and agrees that 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 promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this Section 6409 approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409 approval.
- L. **Performance Bond.** Before the applicable City Department issues any construction or encroachment permit, in connection with this Section 6409 approval, the permittee shall post a performance bond from a surety and in a form acceptable to the Community Development Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Community Development Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. In addition, the Community Development Director may modify this condition to the extent reasonably necessary to comply with any reasonable requirements imposed by the permittee's surety.
- M. **Recall to Approval Authority; Permit Revocation.** The Section 6409 Permit be subject to Section 17.10.130 (General Regulations – Revocation of Permits) of this Title.
- N. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless 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, any ambiguities or uncertainties that

would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

- O. **Undergrounded Utilities.** In the event that other electric or communications utilities in the public right-of-way underground their facilities where the permittee's wireless facility is located, and the permittee's wireless facility is located in the public right-of-way, the permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law.
- P. **Electric Meter Removal.** In the event that the electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure in the public right-of-way, the permittee on its own initiative and at its sole cost and expense shall apply to the City for the required encroachment and/or other ministerial permit(s) to remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.
- Q. **Rearrangement and Relocation:**
 - 1. The permittee acknowledges that the City, in its sole discretion and at any time, may:
 - a. Change any street grade, width or location;
 - b. 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
 - c. Perform any other work deemed necessary, useful or desirable by the City (collectively, "City Work").
 - 2. 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 this permit. In the event that the Public Works Director determines that any City Work will require the permittee's wireless facility located in the public right-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation.
 - 3. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility 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 permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Public Works Director determines that the City Work is immediately necessary to protect public health or safety.

4. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, the permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any claims in connection with rearranging or relocating the permittee's facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the permittee's facility.
- R. **Abandoned Wireless Facilities.** The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within ninety (90) days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the EMMC. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

17.92.070 – Time Periods.

A Section 6409 Permit shall be valid for 12 months after the date of approval. If the applicant has proceeded in good faith toward the implementation of the Section 6409 Permit as determined by the Community Development Director or Public Works Director, the applicant may request a 12-month extension. The applicant shall submit the request prior to the expiration date. The extension shall be considered by the Community Development Director or Public Works Director within 30 days of the request. No additional extensions shall be permitted.

17.92.080 – Appeals.

The Community Development Director's and Public Works Director's decisions are appealable to the City Manager. The City Manager's decision shall be final. Refer to Section 17.10.100 (General Regulations – Ability to Appeal) of this Title for additional information.

This page is intentionally left blank.