

Attachment No. PC 3

Draft NBMC Chapter 13.22

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**CHAPTER 13.22
PERSONAL WIRELESS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF- WAY**

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13.22.010. Purpose.

The purpose of this chapter is to establish reasonable and uniform standards and procedures for personal wireless service facilities deployment, construction, installation, collocation, modification, operation, relocation, and removal within the public right-of-way, consistent with and to the extent permitted under federal and state law. The regulations set forth in this chapter are intended and shall be applied to protect and promote public health, safety, and welfare; retain the aesthetic character of the City; and ensure that residents, visitors, businesses, and government services in the City have reliable access to the state-of-the-art wireless telecommunications networks. This chapter addresses batch processing standards for substantially similar broadband projects.

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

- A. Prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services;
- B. Prohibit or effectively prohibit any personal wireless service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations;
- C. Unreasonably discriminate among providers of functionally equivalent services;
- D. 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 facilities comply with the FCC's regulations concerning such emissions;
- E. Prohibit any collocation or modification that the City may not deny under federal or state law; or
- F. Otherwise authorize the City to preempt any applicable federal or state law or regulation.

13.22.020. Definitions.

The abbreviations, phrases, terms, and words shall have the meanings assigned to them in this section. If any definition assigned to any phrase, term, or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition shall control.

"Accessory equipment" means any equipment serving or being used in conjunction with antennas that have been established for the purpose of providing personal wireless services up to the point of connection with a larger fiber optic or power network. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, wires, conduits, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

"Antenna" means the same as defined in 47 CFR Section 1.6002(b), as may be amended or superseded, which currently defines the term as an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15.

"Applicant" means an entity that possesses the appropriate legal authority to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way.

"Base station" means the same as defined in 47 CFR Section 1.6100(b)(1), as may be amended or superseded, which currently defines that term as structure or equipment at

a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii).

“Code” means the Newport Beach Municipal Code.

“Day” shall mean one calendar day unless specifically set out in this chapter.

“Existing” means the same as defined in 47 CFR Section 1.6100(b)(5), as may be amended.

“Eligible facilities request” means the same as defined in 47 CFR Section 1.6100(b)(3), as may be amended, which currently defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“Laws” mean any and all applicable Federal, State and local ordinances, resolutions, regulations, administrative orders, or other legal requirements.

“Master license agreement” means a contractual agreement between the City, acting in its proprietary capacity, and an applicant that establishes the uniform terms, conditions, and procedures governing the use of City property or infrastructure within the public right-of-law to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities.

“Modify” means changing an existing personal wireless service facility in any manner. This includes, but is not limited to, increases to the power output of the personal wireless

service facility and physical changes to the personal wireless service facility.

“Permittee” means the owner of a personal wireless service facility that has obtained permission through issuance of a wireless facility permit or 6409(a) applicant to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way. Said owner shall possess the appropriate legal authority to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way.

“Person” means an individual or legal entity that is recognized by law as the subject of rights and duties.

“Personal wireless services” means the same as defined in 47 USC Section 332(c)(7)(C)(i), as may be amended, which currently defines the term as commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

“Personal wireless service facility(ies)” or “facility(ies)” means the same as defined in 47 USC Section 332(c)(7)(C)(ii), as may be amended, which currently defines the term as facilities that provide personal wireless services.

“Public right-of-way” means the same as defined in Section 13.20.20 of this Code, which currently defines the term as the improved or unimproved surface of and the space above and below a City easement for public utility purposes, or street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use now or hereafter held by City, however acquired.

“Public Works Director” means the Public Works Director or his or her designee.

“Section 6409(a)” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb. 22, 2012), codified as 47 USC Section 1455(a), as amended.

“Section 6409(a) approval” means the City’s formal authorization granted for an applicant’s eligible facilities request.

“Site” means the same as 47 CFR Section 1.6100(b)(6), as amended.

“Substantial change” or “substantially change the physical dimensions” means the same as interpreted by applicable courts and in 47 CFR Section 1.6100(b)(7), as amended, which currently states that a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the

structure by more than 10% or more than ten feet, whichever is greater;

- (a) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 1.6100(b)(7)(i) through (iv).

“Substantially similar” means sites that are nearly 95% identical to another broadband project in terms of equipment and general design, but not in terms of location, as determined by the Public Works Director in their reasonable discretion and subject to applicable law regulating broadband projects.

“Tower” means the same as defined in 47 CFR Section 1.6001(b)(9), as amended, which currently defines the term as any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul,

and the associated site.

“Transmission equipment” means the same as defined in 47 CFR Section 1.6100(b)(8), as amended, which currently defines the term as equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Unlicensed wireless service” means the same as defined in 47 USC Section 332(c)(7)(C)(iii), as amended which currently defines the term as the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in Section 303(v) of Title 47 of the USC.

“Wireless Telecommunications Encroachment Permit” means a temporary authorization granting the right to utilize a limited portion of the public right-of-way for the installation of a personal wireless facility, as approved under a valid Wireless Facility Permit.

“Wireless Facility Permit” means a written authorization (in electronic or hard copy format) to install a personal wireless service facility at a specific location(s) in the City’s public right-of-way. A permit may consist of an agreement between the applicant and the City to install and maintain one or more personal wireless service facilities in or on any property, building, facility or other structure in the City.

13.22.030. Applicability.

This chapter applies to all personal wireless service facilities in any public right-of-way as follows:

- A. All facilities for which applications were not approved prior to the effective date of this chapter shall be subject to and comply with all provisions of this chapter; and
- B. All facilities, notwithstanding the date approved, shall be subject immediately to:
 - 1. Section 13.22.130 Radio frequency exposure monitoring requirements;
 - 2. Section 13.22.140 Maintenance standards;
 - 3. Section 13.22.190 Abandonment;
 - 4. Section 13.22.210 Removal and restoration;
 - 5. Section 13.22.220 Insurance and bond; and
 - 6. Section 13.22.230 Indemnity.
- C. Exempt Facilities. Notwithstanding any other portion of this Section 13.22.030 (“Applicability”), the provisions in this chapter shall not be applicable to:

1. Personal wireless service facilities or equipment owned and operated by California Public Utilities Commission-regulated electric companies for use in connection with electrical power generation, transmission, and distribution facilities subject to California Public Utilities Commission General Order 131-E, as may be amended;
2. Personal wireless service facilities that are constructed for City use or by the City to exclusively provide unlicensed wireless services, such as Wi-Fi;
3. Personal wireless service facilities that are installed or operated under the direction of the City or a City contractor;
4. Personal wireless service facilities that are for the purpose of wireless-based reading of water, gas, or electric meters;
5. Amateur radio facilities;
6. Over the Air Reception Devices (“OTARD”) antennas;
7. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement; and
8. Any personal wireless service facility to the extent that the City’s exercise of its authority under this chapter is preempted by, or would otherwise violate, applicable federal or state law, provided that the Public Works Director has determined that the personal wireless service facility has been designed to minimize the extent of the non-conformity with the Code.

13.22.040. Departmental Standards, Forms, and Other Regulations.

The City Council authorizes the Public Works Director to develop and publish a Public Right-of-Way Personal Wireless Service Facility Standards and Regulations document to supplement the regulations set forth in this chapter. In addition, the City Council authorizes the Public Works Director to develop and publish permit application forms, checklists, informational handouts, and other related materials for this chapter. Without further authorization from the City Council, the Public Works Director may from time to time update and alter the Public Right-of-Way Wireless Service Facility Standards and Policies, permit application forms, checklists, informational handouts, and other related materials as the Public Works Director deems necessary or appropriate. The City Council further authorizes the Public Works Director to establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants and/or submittals without appointments, and inspection procedures, as the Public Works Director deems necessary or appropriate to organize, document, and manage the application, permitting, construction, and other processes related to personal wireless service facilities. All such rules and regulations must be in written form and posted on the City’s website.

13.22.050. Permits Required.

A. Wireless Facility Permit. A wireless facility permit is required to construct, install, modify, collocate, relocate, or otherwise deploy a personal wireless service facility in the public right-of-way except eligible facilities requests regulated pursuant to Section 13.22.030(B) of this chapter. In the coastal zone, in addition to a wireless facility permit, a coastal development permit or de minimis waiver may be required for the deployment of personal wireless services facilities pursuant to Chapters 21.49 and 21.52.

B. Master License Agreement. Personal wireless service facilities installed, maintained and operated in compliance with the terms and conditions of a master license agreement template approved by the City Council are exempt from the requirement to obtain a Wireless Facility Permit pursuant subsection (A) of this section. The personal wireless facilities subject to the master license agreement shall comply with all other provisions of this chapter.

C. Wireless Telecommunications Encroachment Permit. No work in the public right-of-way shall occur unless a wireless telecommunications encroachment permit has been properly issued, and only the work described therein shall occur.

D. Other Permits and Regulatory Approvals. In addition to any permit required under this chapter, the applicant must obtain and comply with all other required authorizations and permits and all other regulatory approvals from all City departments, and State and Federal agencies.

E. Proprietary Approvals. Nothing in this chapter shall be deemed to waive any required proprietary approvals for siting of personal wireless service facilities on privately or publicly owned property or improvements.

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

13.22.060. Permit Applications.

A. Application Requirement. Except as provided in subsection (C) of this section, the City shall not accept, approve, or deny any personal wireless service facility subject to this chapter except upon a duly filed application pursuant to this chapter and the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.

B. Application Form. The Public Works Director shall develop and from time to time revise the application form. The current application form shall be published by being available in paper form at the public works counter. Additionally, the form may be published on the City’s web site.

C. Batch Applications. Applicants may submit one batched application at a time, consisting of a maximum of fifty (50) separate personal wireless service facilities applications. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the

batch and the submittal of separate materials for each facility. Any application that is determined to be incomplete shall be deemed withdrawn in accordance with Section 13.22.070 of this chapter. Applicants may not submit an additional or subsequent batched application until the prior batched application has been denied, deemed withdrawn, or approved.

D. Wireless Telecommunications Encroachment Permit Applications. An application for a wireless telecommunications encroachment permit shall comply with the procedures stated in this section, and an application may be presented in person at any time that the Public Works counter is open to the public.

13.22.070. Applications Deemed Withdrawn.

If an application is deemed incomplete, the City shall notify the applicant as to what information is needed to deem the application complete. The applicant must provide all requested information within sixty (60) days of being notified by the City that the application is incomplete or the application shall be deemed withdrawn without prejudice by the applicant. If the applicant delivers to the City a written request prior to the sixtieth (60) day to extend the response time, the Public Works Director may grant a written extension where the applicant provides good cause to grant the extension. The extension, if granted, may be for up to an additional thirty (30) calendar days. No additional extensions shall be granted.

13.22.080. Fees.

The City Council may approve by resolution a Fee Schedule that establishes cost-based fees for permits, consulting costs, inspections, enforcement, amendments, noticing, informational materials, penalties, copies, and other such items as required by this chapter. These fees may be amended by the City Council.

13.22.090. Wireless Facility Permit Applications.

A. Decision Notices. Within five (5) days after the Public Works Director approves, conditionally approves, or denies a wireless facility permit application, the Public Works Director shall transmit a written determination to the applicant at the email address provided on the application. The Public Works Director shall also post the written determination on the City's website. For any denial notice, the Public Works Director shall include the reasons for the denial either in the notice or as a separate written document, and shall also place a copy of the denial notice in the written administrative record for the project.

B. Required Determinations for Approval. The Public Works Director shall only approve or conditionally approve a duly filed application for a wireless facility permit if the Public Works Director determines that the project, as submitted or modified, conforms to all the following criteria:

1. The proposed personal wireless service facility complies with all applicable requirements described in this chapter and in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations; and

2. The proposed personal wireless service facility complies with all other laws, including, without limitation, State and Federal law.

The inability to make one or more of the findings required in this chapter is grounds for denial of an application.

C. Conditional Approvals. The Public Works Director may impose any reasonable condition or conditions on any wireless facility permit, related and proportionate to the subject matter in the application, as the Public Works Director deems necessary or appropriate for the preservation of public health and safety.

13.22.100. 6409(a) Permit Applications.

A. Decision Notices. Within five (5) days after the Public Works Director approves, conditionally approves, or denies a 6409(a) permit application, the Public Works Director shall transmit a written determination to the applicant at the email address provided on the application. Additionally, within five (5) days after the Public Works Director approves, conditionally approves, or denies a 6409(a) permit application, the Public Works Director shall post the written determination on the City's website. For any denial notice, the Public Works Director shall include the reasons for the denial either in the notice or as a separate written document.

B. Required Determinations for Approval. The Public Works Director shall only approve or conditionally approve a duly filed application for a 6409(a) permit if the Public Works Director determines that the project, as submitted or modified, conforms to all the following criteria:

1. The proposed personal wireless service facility complies with all applicable requirements described in this chapter and in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations;
2. The proposed personal wireless service facility complies with all other laws, including, without limitation, State and Federal law;
3. The 6409(a) permit application constitutes an eligible facilities request; and
4. The 6409(a) permit application does not substantially change the physical dimensions of a wireless tower or base station.

The inability to make one or more of the determinations required in this chapter is grounds for denial of an application.

C. Conditional Approvals. As permitted by law, the Public Works Director may impose conditions on any 6409(a) permit for the preservation of public health and safety.

13.22.110. Limited Exception for Wireless Facility Permits Applications.

The Public Works Director shall not grant any limited exception for a wireless facility permit application pursuant to this section unless the Public Works Director finds all the following:

- A. The proposed facility qualifies as a personal wireless service facility as defined in this chapter;
- B. The applicant has provided the Public Works Director with a reasonable and clearly defined technical service objective to be achieved by the proposed facility;
- C. The applicant has provided the Public Works Director with a written statement that contains a detailed and fact-specific explanation as to why the proposed facility cannot be deployed in compliance with the applicable provisions in this chapter and the Code, including the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations;
- D. The applicant has provided the Public Works Director 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, or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective(s) to be achieved by the proposed facility; and
- E. The applicant has demonstrated that the proposed location and design is the least non-compliant configuration that shall reasonably achieve the applicant's reasonable and clearly defined technical service objective(s) to be achieved by the proposed facility, which includes, without limitation, a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area.

13.22.120. Permit Expiration and Deadlines.

- A. Wireless Facility Permits and 6409(a) Approval.
 - 1. Expiration. Unless a shorter period is permitted or preempted by law, a wireless facility permit or 6409(a) approval for any personal wireless service facility shall be valid for a period of ten (10) years from the date of issuance, unless such permit is terminated pursuant to Section 13.22.150, revoked pursuant to Section 13.22.160, or becomes null and void pursuant to subsection (A)(3) of this section. At the end of ten (10) years from the date of issuance, such permit or 6409(a) approval shall automatically expire.
 - 2. Permit Renewal. A permittee may apply for a new wireless facility permit or 6409(a) approval renewal no earlier than eighteen (18) months nor later than six (6) months prior to expiration of the expiring permit or 6409(a) approval. Said application and proposal shall comply with the City's code and application requirements in effect at the time of said application.
 - 3. Time to Obtain Wireless Telecommunications Encroachment Permit. For any wireless facility permit or 6409(a) approval granted under this chapter, the permittee shall obtain a wireless facility encroachment permit to perform the work within one hundred eighty (180) days of issuance of the wireless facility permit or 6409(a) approval. Failure to obtain a wireless facility encroachment permit pursuant to this Section 13.22.120(A)(3) shall automatically render the

wireless facility permit or 6409(a) approval null and void.

B. Wireless Facility Encroachment Permit.

1. **Time to Commence Work.** For any wireless facility encroachment permit granted under this chapter, the permittee shall commence work within one (1) calendar year from the date of issuance of this permit.
2. **Time to Complete.** The permittee shall complete work within one hundred eighty days (180) from the date of commencing work pursuant to subsection (B)(1) of this section.
3. **Extensions.** The Public Works Director may grant up to a maximum of three written extensions of time from the stated periods in subsections (B)(1) and (B)(2) of this section where the permittee provides good cause to grant the extension. An extension, if granted, may be for up to an additional sixty (60) days.
4. **Expiration.** Where a permittee of a wireless telecommunications encroachment permit fails to comply with this section, the permit shall automatically expire.
5. **Permit Renewal.** Before any work authorized under an expired wireless telecommunications encroachment permit can be recommenced, the permittee shall file an application for a wireless facility permit renewal or 6409(a) approval renewal pursuant to the Public Right-of-Way Wireless Facility Standards and Regulations. Renewal permits or 6409(a) approval renewals shall be subject to a renewal fee and the Public Right-of-Way Wireless Facility Standards and Policies in effect at the time of filing for the renewal.

13.22.130. Radio Frequency Exposure Monitoring Requirements.

- A. **FCC Compliance.** The City shall not approve any permit that does not demonstrate planned compliance with the FCC's regulations concerning radio frequency exposure.
- B. **Pre-Installation Reporting.** As part of any application required under this chapter, the applicant shall provide to the City a radio frequency electromagnetic energy report pursuant to the requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.
- C. **Post-Installation Certification.** Within thirty days (30) of commencing operation of a new or modified personal wireless service facility, the permittee shall provide to the Public Works Director a post-installation certification confirming, under penalty of perjury, that the actual emissions from the personal wireless service facility do not exceed that disclosed in the pre-installation report submitted pursuant to subsection (B) of this section.

13.22.140. Maintenance Standards.

All personal wireless service facilities must comply at all times with the following maintenance standards:

- A. All personal wireless service facilities shall be maintained in good condition, including ensuring the facilities are reasonably free of:
1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored, or damaged camouflage;
 6. Graffiti, bills, stickers, advertisements, litter, and debris;
 7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- B. Each personal wireless service facility shall be maintained at all times in compliance with all laws.
- C. Within thirty (30) days of the anniversary date of the permit, each owner of a personal wireless service facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and all conditions of approval.

13.22.150. Termination for Public Benefit.

Every permit granted under this chapter may be terminated upon twelve (12) months' prior written notice to the permittee, or less time if in response to an urgent or emergency situation as determined by the City, if the personal wireless service facility interferes or will interfere with any public work of improvement that impacts the public right-of-way. If a permit granted under this chapter is terminated pursuant to this section, any wireless facility permit application for a new personal wireless service facility within five hundred (500) feet of the terminated wireless facility permit that will act as a replacement for the terminated wireless facility permit shall not be subject to site justification pursuant to Section 13.22.250(B).

13.22.160. Revocation or Modification.

Any permit granted under this chapter may be revoked or modified for cause in accordance with the provisions of this section.

- A. **Initiation.** Revocation or modification proceedings may be initiated by the Public Works Director.
- B. **Notification of Hearing.** The permittee shall be notified by the Public Works Director of the basis for the proposed revocation or modification and be provided a date and time during which a hearing will be held not less than fourteen (14) days in advance of said hearing.

C. Required Findings for Revocation or Modification. The Public Works Director may revoke or modify the permit if they make any of the following findings:

1. The applicant obtained the approval by means of fraud or misrepresentation of a material fact;
2. The applicant has failed to construct, or has expanded or altered the permitted facility in a manner that is inconsistent with that set forth in the permit;
3. The personal wireless service facility has not been operational for six (6) months or more;
4. The permitted facility has failed to comply with any condition of a permit issued;
5. The permitted facility has failed to comply with any provision in this chapter;
6. A substantive change of State or Federal law or regulations materially affects a permittee's authority to occupy or use the public right-of-way or the City's ability to impose regulations relating to such occupation or use; or
7. The permitted facility is located on a utility pole or structure subject to removal pursuant to a lawfully approved utility undergrounding district or other rule or regulation.

D. Notice of Action. A written determination of revocation shall be sent via certified mail to the permittee within five (5) days of such determination. Service by certified mail shall be deemed completed at the time of deposit with the post office.

13.22.170. Expert Assistance.

Where the City determines that it requires the services of a consultant for expert assistance in implementing this chapter or processing any application received thereunder, the applicant shall deposit a fee equal to the estimated cost of the consultant's services to the City. The City may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the consultant's services. If the actual fees exceed the deposited fees, the applicant shall pay the difference to the City. If the actual fees are less than the deposited fees, the applicant shall be refunded for the difference from the City. No permit for an approved project shall be issued if the applicant owes the City funds to fully reimburse the City for its actual costs to process the application, including, without limitation, reimbursement for the City's consultant costs.

13.22.180. Deemed Approved.

If an application is deemed approved by any rule of law or regulation, all applicable requirements of this chapter, including those requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations in effect at the time of the deemed approval, and any other applicable laws, including, without limitation, standard conditions of approval, shall automatically attach and apply as permit conditions.

13.22.190. Abandonment.

A. A personal wireless service facility that is considered abandoned pursuant to Section 13.22.160(C)(3) shall be promptly removed and, as applicable, the area restored to its prior condition at the permittee’s sole cost and expense within sixty (60) days after abandonment.

B. If there are two or more users of a single facility, then the duty to remove the extra equipment shall apply unless the Public Works Director determines that removal of the abandoned personal wireless service facility would not be in the public interest.

C. The owner of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within thirty (30) days of ceasing or abandoning use.

D. Failure to inform the Public Works Director of cessation of operations or abandonment of any personal wireless service facility as required by this section shall constitute a violation of any approvals and be grounds for:

- 1. Revocation or modification of the permit;
- 2. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
- 3. Removal of the facilities by the City at the owner's expense; and/or
- 4. Any other remedies permitted under this Code or by law.

13.22.200. Preservation of City Rights.

A. Overview. The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the public right-of-way. Such actions may temporarily or permanently interfere with the personal wireless service facility. The City shall in all cases, other than emergencies, give the applicant written notification of such planned, non- emergency actions no fewer than fourteen (14) days prior to such actions.

B. Summary Removal. If the Public Works Director determines that the condition or placement of a personal wireless service facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of- way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), the Public Works Director may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property subject to any disposal or reuse in the City’s sole discretion.

C. Non-Liability for Removal. If the City removes a personal wireless service facility pursuant to Section 13.22.200(B), any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. The City has no obligation to restore such facility. The permittee shall not have any claim if the City removes a personal wireless service facility pursuant to Section 13.22.200(B).

13.22.210. Removal and Restoration.

A. General Provisions. Upon the expiration date of the permit, earlier termination or revocation of the permit or abandonment of the facility, the permittee shall remove its personal wireless service facility and restore the site to its natural condition except for any improvements to be retained by the City at its discretion. Any such retained improvements shall be purchased from the permittee for one dollar, and the parties will cooperate to effectuate this provision. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property, at no cost or expense to the City.

B. Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within sixty (60) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this chapter. Upon a showing of good cause, an extension may be granted by the Public Works Director where circumstances are beyond the control of the permittee after expiration, earlier termination or revocation of the permit, or abandonment of the facility. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Acting on any security instrument required by this chapter or conditions of approval of permit;
2. Removal of the facilities by the City at the owner's expense; and/or
3. Any other remedies permitted under this Code or under State or Federal law.

13.22.220. Insurance and Bond.

A. Insurance. The permittee, including its agents and contractors, shall procure and maintain in full force and effect as a condition of any permit granted under this chapter, insurance pursuant to the requirements of the City's Risk Manager.

B. Bond. Permittee shall pay for and provide a performance bond or other form of security approved by the City Attorney's Office, which shall be in effect until the personal wireless service facility is fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under this chapter. The security instrument coverage shall include, but not be limited to, removal of the facility. The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and pursuant to the requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.

13.22.230. Indemnity.

To the fullest extent permitted by law, the permittee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and assigns (collectively, the "Indemnified Parties") from and against any and all: (1) claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the permittee or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them; and (2) claims brought against the Indemnified Parties to challenge, attack, seek to modify, set aside, void or annul the City's approval of any permit or regulatory approval authorized by the City under this chapter.

Notwithstanding the foregoing, nothing herein shall be construed to require the permittee to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

If the City becomes aware of any claims, the City shall use best efforts to promptly notify the permittee and shall reasonably cooperate in the defense. 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.

13.22.240. Emergency Deployment.

In the event of an officially-declared Federal, State, or local emergency, or when otherwise warranted by conditions that the City deems to constitute an emergency, the Public Works Director, City Manager, or their designees may approve the installation and operation of a temporary personal wireless service facility (e.g., a cell on wheels, or "COW"), which is subject to such reasonable conditions that the City deems necessary.

13.22.250. Location and Deployment Preferences.

A. New Poles. New poles in the public right-of-way detract from the aesthetics of the City. New poles in the public right-of-way to accommodate a personal wireless service facility that are not replacing an existing pole are permitted only through the exception process pursuant to Section 13.22.110.

B. Site Justification. For wireless facility permit applications, the applicant shall provide to the City a site justification report pursuant to the requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.

13.22.260. Appeals.

The decision of the Public Works Director shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

13.22.270. Effect on Other Ordinances.

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

REFERENCE DRAFT