

Attachment No. PC 1

Resolution No. PC2026-006

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RESOLUTION NO. PC2026-006

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING THE CITY COUNCIL ADOPT AN AMENDMENT TO TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO WIRELESS SERVICE FACILITIES (PA2021-103)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On September 26, 2018, the Federal Communications Commission (FCC) issued the Declaratory Ruling and Third Report, adding regulations 47 C.F.R. 1.6001-1.6004, which adopted new rules substantially revising local jurisdictions' authority to regulate the deployment of small wireless facilities (i.e., "small cell"). Under the police power of Article XI, Section 7 of the California Constitution, as confirmed by *T-Mobile West LLC v. City and County of San Francisco* (2019), local jurisdictions retain the full authority to regulate wireless service facilities in the right-of-way to the extent such regulations are not inconsistent with general laws. As a result of these FCC changes, it was determined to be in the best interest of the City of Newport Beach ("City") and the public to update the Newport Beach Municipal Code ("NBMC") in a manner that would make the regulations of the City consistent with state and federal law.
2. On May 25, 2021, the City Council adopted Resolution No. 2021-42 to initiate updates to Title 20 (Planning and Zoning) ("Code Amendment") and Title 21 (Local Coastal Program Implementation Plan) of the NBMC related to wireless telecommunications facilities (i.e., "wireless service facilities") in the public right-of-way.
3. Upon the City Council's initiation, staff evaluated the City's regulations and monitored ongoing developments in state and federal law, ultimately determining that the City's framework was functioning appropriately.
4. Since the City's last comprehensive update in 2014, the telecommunications landscape has evolved significantly, with demand shifting from traditional voice service to high-capacity, data-driven connectivity. Increased reliance on cellular networks, the proliferation of connected devices, and advancements in wireless technology have intensified the need for reliable infrastructure, underscoring the importance of maintaining regulatory and permitting processes that are clear, adaptable, and consistent with the City's authority to provide thoughtful local oversight.
5. On January 13, 2026, the City Council conducted a study session where City staff identified a three-pronged approach to revamping the City's regulations for wireless service facilities, especially those in the public right-of-way, and at the conclusion, the City Council unanimously supported several updates to the NBMC.

6. A public hearing was held on March 5, 2026, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California 92660. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The Code Amendment is not a project subject to the California Environmental Quality Act (“CEQA”) in accordance with Section 20165 of the California Public Resources Code and Sections 15060(c)(2), 15060(c)(3), and 15378 of the California Code of Regulations, Title 14, Division 6, Chapter 3 (“CEQA Guidelines”). The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment.

SECTION 3. FINDINGS.

An amendment to Title 20 (Planning and Zoning) of the NBMC is a legislative act. Neither Chapter 20.66 (Planning and Zoning, Amendments) of Title 20 (Planning and Zoning) of the NBMC, nor Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Notwithstanding the foregoing, the Code Amendment is consistent with the City Council’s initiation on May 25, 2021, and subsequent direction on January, 13, 2026, and the following findings are made:

1. The Code Amendment is consistent with and in furtherance of several General Plan goals and policies, including LU 2.4 (Economic Development), LU 2.8 (Adequate Infrastructure), LU 3.2 (Growth and Change), CE 6.1.5 (Autonomous, Connected, and Future Vehicle Technology), NR 17.1 (Open Space Protection), NR 20.1 (Enhancement of Significant Resources), and NR 20.3 (Public Views).
2. The Code Amendment will remove Class 3 (Public Right-of-Way) Installations from the purview of Title 20 (Planning and Zoning), which will be relocated to Title 13 (Streets, Sidewalks and Public Property). The preferential hierarchy of installation types and review procedures are not changing. The Code Amendment will continue to provide a balanced review process consistent with existing procedures provided within Title 20 (Planning and Zoning) of the NBMC.
3. The Code Amendment does not increase the potential height of wireless service facilities nor does it allow them in areas where they are currently prohibited.
4. The Code Amendment continues to provide adequate design, development, and screening standards to ensure that future facilities are visually compatible with the community.

5. The Code Amendment includes provisions reflective of state and federal law and provides for the administrative review of minor modifications to, or the collocation of, existing wireless service facilities.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

6. The Planning Commission of the City of Newport Beach hereby finds the Code Amendment is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060(c)(2), 15060(c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment.
7. The Planning Commission hereby recommends approval of the Code Amendment, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF MARCH 2026.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Tristan Harris, Chair

BY: _____
Jonathan Langford, Secretary

Attachment: Exhibit "A" – Draft Title 20 Amendment

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EXHIBIT "A"

TITLE 20 (PLANNING AND ZONING) CODE AMENDMENT

Chapter 20.49 (Wireless Telecommunications Facilities) will be replaced in its entirety with the following:

**CHAPTER 20.49
PERSONAL WIRELESS SERVICE FACILITIES**

Sections:

- 20.49.010. Purpose.**
- 20.49.020. Definitions.**
- 20.49.030. Applicability.**
- 20.49.040. Site Location Preference and Prohibited Locations.**
- 20.49.050. Permits Required.**
- 20.49.060. Permit Applications.**
- 20.49.070. Modification and Collocation of Existing Facilities**
- 20.49.080. Departmental Forms, Rules and Other Regulations.**
- 20.49.090. Design Standards.**
- 20.49.100. Decisions.**
- 20.49.110. Standard Conditions of Approval.**
- 20.49.120. Temporary Personal Wireless Service Facilities.**
- 20.49.130. Compliance Obligations.**
- 20.49.140. Removal and Abandonment of Wireless Facilities.**

20.49.010. 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 on all property other than the public right-of-way within the City's territorial boundaries, consistent with and to the extent permitted under federal and 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 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, its various neighborhoods and community.

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 based on environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission’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.

20.49.020. Definitions.

The abbreviations, phrases, terms and words shall have the meanings assigned to them in this Section 20.49.020 or, as may be appropriate, in Chapter 20.70 (Definitions), as may be amended, unless context indicates otherwise. Undefined phrases, terms or words in this section shall have the meanings assigned to them in 47 U.S.C. Section 702, as may be amended, and, if not defined therein, shall have their ordinary meanings. 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.

“Approval authority” means the Community Development Director, Zoning Administrator, Planning Commission, or City Council, depending on the type of facility proposed.

“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 a device used to transmit and/or receive radio or electromagnetic waves for the provision of personal wireless services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

“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).

“City-owned or City-held trust property” means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City’s jurisdiction, including but not limited to City Hall, police and fire facilities, recreational facilities, parks, beaches, libraries, monuments, signs, streetlights and traffic control standards.

“Code” means the Newport Beach Municipal Code.

“Collocation” means (a) for the purposes of any eligible facilities request, the same as defined by 47 CFR Section 1.6100(b)(2), as may be amended, which currently defines the term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, “collocation” as defined herein, effectively means “to add” and does not necessarily refer to more than one personal wireless service facility installed at a single site; and (b) for all other purposes, has the same definition as is found in 47 CFR Section 1.6002(g), as may be amended, which defines the term as (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“CPCN” means a “Certificate of Public Convenience and Necessity” granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code Section 1001 et seq., as may be amended.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency or agencies.

“Director” shall mean the Community Development Director and his or her designee.

“Distributed antenna system (DAS)” means a network of one or more antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

“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.

“Facility Classes” refers to the classes of personal wireless service facilities and the attendant

support equipment, which are categorized as follows:

1. Class 1 (Stealth/Screened): a facility with antennas mounted on an existing or proposed nonresidential building or other structure not primarily intended to be an antenna support structure where antennas and support equipment, including the base station, are fully screened so that they are not visible to the general public.
2. Class 2 (Visible Antennas): a facility with antennas mounted on an existing nonresidential building, structure, pole, light standard, utility tower, wireless tower and/or lattice tower.
3. Class 3 (Public Right-of-Way Installations): a facility with antennas installed on a structure located in the public right-of-way, as regulated by Chapter 13.22 (Personal Wireless Service Facilities in the Public Right-of-Way).
4. Class 4 (Freestanding Structure): a facility with antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the personal wireless service facility.
5. Class 5 (Temporary): a personal wireless service facility including associated support equipment that is installed at a site on a temporary basis pursuant to a limited term permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a special events permit pursuant to Chapter 11.03 with or without a limited term permit.

“FAA” means the Federal Aviation Administration or its duly appointed successor agency.

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

“Feasible” or “feasibly” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

“OTARD” means an over-the-air reception device subject to 47 C.F.R. Section 1.4000 et seq., as may be amended, and which currently includes, without limitation, satellite television dishes not greater than one meter in diameter.

“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.

“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 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.

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

“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 U.S.C. Section 1455(a), as may be amended.

“Stealth” or “stealth facility” means a personal wireless service facility in which the antenna, and the support equipment, are completely hidden from view such as in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average reasonable observer do not qualify within this definition. For example, an artificial tree may not be considered to be a stealth facility.

“Substantially 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 that 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).

“Support equipment” means the physical, electrical and/or electronic equipment included within a personal wireless service facility used to house, power, and/or contribute to the processing of signals from or to the facility’s antenna or antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support equipment does not include DAS, antennas or the building or structure to which the antennas or other equipment are attached.

“Temporary personal wireless service facilities” means portable wireless communication facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent personal wireless service facilities. Temporary personal wireless service facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless communication facilities not permanently affixed to the site or land upon which it is located.

“Tower” means the same as defined in 47 CFR Section 1.60001(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 United States Code.

“Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

20.49.030. Applicability.

- A. Applicable Facilities. This chapter applies to all personal wireless service facilities within the City and all to applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy personal wireless service facilities in the City, unless exempted pursuant to subsection (B) of this section.
- B. Exempt Facilities. Notwithstanding subsection (A) of this section, the provisions in this chapter shall not be applicable to the facilities listed in this subsection (B):
 - 1. Facilities installed in the public right-of-way governed by Chapter 13.22 (Personal Wireless Service Facilities in the Public Right-of-Way), or exempted by 13.22.030(C) of this Code;
 - 2. Amateur radio facilities;
 - 3. OTARD antennas;
 - 4. Personal wireless service facilities installed completely indoors and not visible to the public intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system);
 - 5. Personal wireless service 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;
 - 6. Any personal wireless service facilities or associated infrastructure that are developed, installed, managed, or operated by the City, for the City, or under the City’s direction, or located on real property owned by the City, held in trust by the City, or in which the City maintains a legal or equitable interest and installed pursuant to a lease, license, franchise agreement or other agreement between the City and any third party (whether public or private); and
 - 7. 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 Director has determined that the personal wireless service facility has been designed to minimize the extent of the non-conformity with the Code.

The exemption from provisions in this chapter shall not exempt the same facilities from the provisions and building permit requirements in Title 15 (Buildings and Construction).

- C. Requests for Approval Pursuant to Section 6409(a). Any written request to collocate, replace or remove transmission equipment at an existing tower or base station submitted under Section 6409(a) shall be processed pursuant to Section 20.49.070.
- D. Legal Nonconforming Facility. Any personal wireless service facility that was lawfully constructed, erected, or approved prior to <DATE OF EFFECTIVENESS>, that is operating in compliance with all applicable laws, and which facility does not conform to the requirements of this chapter shall be deemed a legal nonconforming facility. Legal nonconforming facilities shall comply at all times with the laws, ordinances, regulations, and any conditions of approval in effect at the time the facility was approved, and any regulations pertaining to legal, nonconforming uses or structures that may be applicable pursuant to provisions of this Code or Federal and State laws as they may be amended or enacted, in the future.

20.49.040. Site Location Preference and Prohibited Locations.

A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual personal wireless service facilities in the City, the following list establishes the order of preference of facilities, from the most preferred (1) to least preferred (4).

- 1. Collocation of a new facility at an existing facility.
- 2. Class 1.
- 3. Class 2 and Class 3.
- 4. Class 4.

B. Prohibited Locations. Personal wireless service facilities are prohibited in the following locations:

- 1. On properties zoned for single-unit or two-unit residential development including equivalent designations within a planned community district or specific plan districts except if located on common area lots developed with community facilities, landscape lots, or private streets;
- 2. On properties zoned for multi-unit residential development and mixed-use development including equivalent planned community district or specific plan districts where the maximum allowable number of dwelling units is four units; and
- 3. In the Open Space (OS) Zoning District, unless facilities are collocated on an existing utility tower within a utility easement area, or collocated on another existing facility.

20.49.050. Permits Required.

A. Permit Required. Unless exempted pursuant to Section 20.49.030(B), all personal wireless service facilities shall obtain a minor use permit (MUP), conditional use permit (CUP),

limited term permit (LTP), or administrative clearance (AC) as provided for in Table 4-1 unless prohibited by Section 20.49.040(B). Notwithstanding permits identified in Table 4-1, any application for a facility that proposes to exceed the maximum height limit of the applicable height limit area in which the facility is located pursuant to Section 20.30.060(C)(2) shall require approval of a CUP by the Planning Commission. The Director’s decision to issue an AC for a Class 1 Installation shall be final and not subject to further administrative appeal.

**Table 4-1
Permit Requirement for
Personal Wireless
Service Facilities**

Facility Class	Permit
Class 1	AC
Class 2	MUP
Class 3	See Chapter 13.22
Class 4	CUP
Class 5	LTP

B. **Review of Collocated Facilities.** Notwithstanding any provision of this chapter to the contrary, and consistent with California Government Code Section 65850.6, the addition of a new facility to an existing facility resulting in the establishment of a collocated personal wireless service facility shall be approved without discretionary review if it complies with Section 20.49.070. If a collocated personal wireless service facility does not satisfy all of the requirements of California Government Code Section 65850.6 and Section 20.49.070, the facility shall be reviewed pursuant to the review procedures provided in Table 4-1.

C. **Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the plans, map, and emission standards shall be sent to the Police Chief. The Police Chief shall review the plan’s potential conflict with emergency communications. The review may include a pre-installation test of the personal wireless service facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.

D. **Other Permits and Regulatory Approvals.** In addition to any minor use permit or other permit required under this chapter, the applicant must obtain all other required permits and other regulatory approvals from the City, and State and Federal agencies. Any minor use permit or other permit granted under this chapter shall be subject to the conditions and/or other requirements in any other required permits or other regulatory approvals.

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.

20.49.060. Permit Applications.

- A. Application Requirement. 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 Chapter 20.50 (Permit Application Filing and Processing) and any other written rules the Director may publish in any publicly-stated format.
- B. Minimum Application Content. The materials required under this section are minimum requirements for any application for any personal wireless service facility:
 - 1. Application Form. The Director shall prepare and issue application forms and lists that specify the information that will be required from applicants for projects subject to the provisions of this chapter, laws, and applicable court decisions.
 - 2. Application Fee. The City Council may approve by resolution a Fee Schedule that establishes cost-based fees for permits, appeals, amendments, information materials, penalties, copying, and other such items. These fees may be amended by the City Council.
- C. Applications Deemed Withdrawn. To promote efficient review and timely decisions by the City, an application will be automatically deemed withdrawn without prejudice by the applicant when the applicant fails to tender a substantive response to the City within sixty (60) calendar days after the City deems the application incomplete in a written notice to the applicant. The Director may, in the Director’s discretion, grant a written extension for up to an additional thirty (30) calendar days when the applicant delivers to the City a written request prior to the sixtieth (60) day that shows good cause to grant the extension. Delays due to circumstances outside the applicant’s reasonable control shall be considered good cause to grant the extension.

20.49.070. Modification and Collocation of Existing Facilities.

- A. Notwithstanding any provision in this chapter, a request to modify an existing facility that involves the collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to administrative review without processing any discretionary permit provided that such modification does not substantially change the existing facility from the original permit for the facility.
- B. Each application submitted under this section for a modification or collocation to an existing personal wireless service facility shall be accompanied by:
 - 1. A detailed description of the proposed modifications to the existing personal wireless service facility(ies);
 - 2. A photograph or description of the personal wireless service facility as originally constructed, if available; a current photograph of the existing facility; and, a graphic depiction of the facility after modification showing all relevant dimensions;
 - 3. A detailed description of all construction that will be performed in connection with the proposed modification; and

4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

C. Any permit issued will be conditioned upon the accuracy of the application, and may be revoked, and the personal wireless service facility shall be removed and restored to its pre-modification condition if any material statement made with respect to the facility application is false or the modifications as actually made would have required a discretionary review had the plan for the facility accurately depicted the modifications.

20.49.080. Departmental Forms, Rules and Other Regulations.

The City Council authorizes the Director of Community Development 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 Director may from time to time update and alter the permit application forms, checklists, informational handouts and other related materials as the Director deems necessary or appropriate to respond to regulatory, technological or other changes related to this chapter. The City Council further authorizes the Director to establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants and/or submittals without appointments, as the Director deems 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.

20.49.090. Design Standards.

A. Generally Applicable Development Standards. All new personal wireless service facilities and all collocations or modifications to existing personal wireless service facilities not subject to Section 6409(a) must conform to the generally applicable development standards in this subsection (A) in order to mitigate impacts on adjacent properties.

1. Concealment. Personal wireless service 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.
2. Public View Protection. All new or modified personal wireless service facilities, whether approved by administrative or discretionary review, shall comply with Section 20.30.100 (Public View Protection). Additionally, potential impacts from a new or modified personal wireless service facility to public views that are not identified by General Plan Policy NR 20.3 shall be evaluated to determine if inclusion in Policy NR 20.3 would be appropriate. If deemed appropriate for inclusion, the potential impacts to such public views shall be considered.
3. Height. All facilities shall not exceed the increased maximum height limit for flat structures in the applicable height limit area pursuant to Section 20.30.060(C)(2) unless the Planning Commission or City Council makes all of the required findings in Section 20.49.100(C) and approves a CUP for a personal wireless service facility to

exceed the maximum height limit by no more than fifteen (15) feet. All personal wireless service facilities shall comply with height restrictions or conditions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060(E) (Airport Environs Land Use Plan for John Wayne Airport and Airport Land Use Commission Review Requirements) as may be in force at the time the personal wireless service facility is permitted or modified.

4. **Setbacks.** Personal wireless service facilities may not encroach into any applicable setback for structures in the subject zoning district unless specifically authorized by the Director.
5. **Noise.** Personal wireless service facilities and all accessory equipment and transmission equipment must comply with all noise regulations, which includes, without limitation, Chapter 10.26 (Community Noise Control), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment reasonably likely to exceed the applicable limit.
6. **Landscaping.** Personal wireless service facilities must include landscape features when proposed in a landscaped area. The approval authority may require additional landscape features to screen the facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this chapter. The permittee shall be responsible for maintenance of and replacement of all landscaping.
7. **Security Measures.** Personal wireless service facilities may incorporate reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft and vandalism. Security measures must be designed to enhance concealment to the maximum extent possible. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures that may cause serious injury or death.
8. **Backup Power Sources.** The approval authority may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly favors non- and low-polluting backup power sources such as fuel cells and natural gas generators, and strongly disfavors backup power sources that pollute such as diesel and gasoline generators. Any permanent backup power sources and/or generator shall be located as far away from sensitive receptors as feasible.
9. **Lights.** Personal wireless service facilities may not include exterior lights other than: (a) as may be required under FAA, 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 avoids illumination impacts on other properties to the maximum extent feasible. FAA or FCC required aircraft warning lighting shall to the maximum extent feasible use lighting shielded from view from any human-occupied structure within the City.

10. Signage; Advertisements. All personal wireless service facilities must include signage that continuously and accurately identifies the equipment permittee, the permittee's site name or identification number, as well as a local or toll-free number to the permittee's network operations center. Personal wireless service facilities must not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended by the FCC, CPUC, or other United States or State governmental agencies.
11. Future Collocations. All personal wireless service facilities must be designed and sited in a manner that contemplates future collocations and shall facilitate additional equipment to be integrated into the proposed facility or associated structures with no or negligible visual changes to its outward appearance to the greatest extent feasible.
12. Utilities. All cables and connectors for telephone, primary electric and other similar utility services must be routed underground to the extent feasible in conduits large enough to accommodate future collocated facilities. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
13. Compliance with Laws. All personal wireless service facilities must be designed and sited in compliance with all applicable Federal, State and local laws, regulations, rules, restrictions and conditions, which includes, without limitation, the California Building Standards Code as amended by the City, General Plan and any specific plan, the Newport Beach Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
14. Nonconformities. A proposed or modified personal wireless service facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable zoning code procedures.

B. Design Standards by Facility Class, Including Support Equipment.

1. Class 1 (Stealth/Screened) Installations.
 - a. All personal wireless service facility components, including all antennas, antenna panels, cables, wires, conduit, mounting brackets, and support equipment, shall not be visible in any direction (360 degrees) from a public right-of-way or adjacent residential property, as may be seen from a point six feet above ground level. The intent is for all equipment to be adequately screened from public view(s), and mounted either inside the building or structure, or behind screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the

exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- c. When a personal wireless service facility is proposed within an existing or new architectural feature such as a steeple, religious symbol, tower, cupola, clock tower, sign tower, etc., the facility shall be architecturally compatible with the existing structure or building.
2. Class 2 (Visible) Installations.
 - a. Building or structure mounted antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the antennas are mounted. No cables, wires, conduit, mounting brackets or any other associated support equipment shall be visible.
 - b. All antenna components and support equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and nonreflective materials that blend with surrounding materials and colors shall be used.
 3. Class 3 (Public Right-of-Way) Installations. A facility within the public right-of-way shall comply with Chapter 13.22.
 4. Class 4 (Freestanding Structure) Installations.
 - a. The installation of new lattice towers or monopoles with visible antennas or antenna arrays is strongly discouraged due to the negative visual effects of such facilities. Preferred monopole designs include fully screened antennas without visible brackets, cables, or conduit. Additionally, any lattice tower or monopole should be sited in the least obtrusive location as practicable.
 - b. The construction of new freestanding structures such as signs, monoliths, pyramids, light houses, or other similar vertical structures shall be designed and sited to appropriately complement a site and screen all elements of the personal wireless service facility.
 - c. The installation of artificial rocks shall match in scale and color with other rock outcroppings in the general vicinity of the proposed site. An artificial rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
 - d. The installation of artificial trees or shrubbery is strongly discouraged if they are obviously not natural to the average reasonable observer. When an artificial tree or shrubbery is proposed, it shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual

screening. All antennas and antenna supports shall be contained within the canopy of the tree design or other vegetation comparable to that being replicated by the proposed screening elements. Finally, the addition of new comparable living vegetation may be necessary to enhance the artificial tree or shrubbery screening elements.

- e. Flagpoles shall not exceed twenty-four (24) inches in width at the base of the flagpole and also shall not exceed twenty (20) inches in width at the top of the flagpole.
5. Class 5 (Temporary) Installations. A temporary personal wireless service facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the application review and permitting process in consideration of the temporary nature of the facility.
 6. Support Equipment. All support equipment associated with the operation of any personal wireless service facility shall be placed or mounted in the least visually obtrusive location practicable, and shall be screened from view.
 - a. Building-Mounted Personal Wireless Service Facilities. For building- or structure-mounted antenna installations, support equipment for the facility may be located inside the building, in an underground vault, or on the roof of the building that the facility is located on; provided, that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening.
 - b. Roof-Mounted Personal Wireless Service Facilities. All screening materials for roof-mounted facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. Freestanding Personal Wireless Service Facilities. For freestanding facilities installations, not mounted on a building or structure, support equipment for the facility may be visually screened by locating the support equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the support equipment at the time of installation.
 - d. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
 - e. Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design not more than a one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of nonreflective material and painted to blend with surrounding materials and colors.
 - f. If placed in an underground vault, flush-to-grade vents, or alternatively, vents that

extend no more than twenty-four (24) inches above the finished grade and are screened from public view may be utilized.

20.49.100. Decisions.

A. Notice.

1. General Notice Required for the Application. Public notice as provided in Chapter 20.62 (Public Hearings) will be required for any minor use permit. The approval authority shall not act on any application for a personal wireless service facility unless the public notice required by law has occurred.
2. Deemed-Approval Notice Procedures. Not more than thirty (30) days before the applicable FCC timeframe for review expires, and in addition to the public notice required in subsection (A)(1) of this section, an applicant for a minor use permit shall provide a posted notice at the project site that states the project shall be automatically deemed approved pursuant to California Government Code Section 65964.1 unless the City approves or denies the application or the applicant tolls the timeframe for review within the next thirty (30) days. The posted notice must be compliant with the provisions in this chapter. The public notice required under this subsection (A)(2) shall be deemed given when the applicant delivers written notice to the Planning Director that shows the appropriate notice has been posted at the project site.
3. Decision Notices. After the approval authority approves, conditionally approves or denies an application for a personal wireless service facility or before the FCC timeframe for review expires (whichever occurs first), the approval authority shall send a written determination to the applicant and all other parties entitled to receive notice. For any denial notice, the approval authority shall include the reasons for the denial either in the notice or as a separate written document.
4. General Findings for Approval. The review authority may approve or conditionally approve an application for a personal wireless service facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following findings:
 - a. The proposed personal wireless service facility is visually compatible with the surrounding neighborhood;
 - b. The proposed personal wireless service facility complies with height, location and design standards, as provided for in this chapter;
 - c. The proposed facility complies with all applicable development standards described in Section 20.49.090;
 - d. The applicant has demonstrated that its proposed facility shall be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions;
 - e. The applicant has demonstrated a good-faith effort to identify and evaluate more-

preferred locations and potentially less-intrusive designs; and

- f. The applicant has provided the approval authority with a meaningful comparative analysis that reasonably shows less-intrusive alternative locations and designs identified in the administrative record are either technically infeasible or not potentially available.

B. Findings to Increase Height. The review authority may approve or conditionally approve an application for a personal wireless service facility which includes a request to exceed the maximum height limit for the zoning district in which the facility is located up to a maximum of fifteen (15) feet only after making each of the following findings in addition to the general findings set forth in subsection (B) of this section and the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- 1. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed personal wireless service facility and existing adjacent developments or public spaces.
- 2. Establishment of the personal wireless service facility at the requested height is necessary to provide service.

C. Conditional Approvals. The approval authority may impose any reasonable conditions on any minor use permit, related and proportionate to the subject matter in the application, as the approval authority deems necessary or appropriate to promote and ensure conformance with the General Plan, any applicable specific plan and all applicable provisions in this Code.

D. Limited Exception for Personal Wireless Service Facilities. The Director shall not grant any limited exceptions to the requirements of this chapter unless all of the following findings can be made:

- 1. The proposed facility qualifies as a personal wireless service facility as defined by this chapter;
- 2. The applicant has provided the Director with a reasonable and clearly defined technical service objective to be achieved by the proposed facility;
- 3. The applicant has provided the 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, the Newport Beach Municipal Code, the General Plan and/or any specific plan;
- 4. The applicant has provided the 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, 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 facility; and
- 5. The applicant has demonstrated that the proposed location and design is the least noncompliant configuration that shall reasonably achieve the applicant's reasonable

and clearly defined technical service objective 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.

E. Appeals. Any person or entity may appeal a decision by the Director in accordance with the standards and procedures set forth in Chapter 20.64 (Appeals). Environmental effects from RF emissions that comply with all applicable FCC regulations shall not be grounds for an appeal.

20.49.110. Standard Conditions of Approval.

In addition to all other conditions adopted by the approval authority, all minor use permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions set forth below:

A. Approved Plans. Before the permittee submits any applications to the Building Division, the permittee must incorporate the permit, all conditions associated with the permit and the approved photo simulations into the project plans (the "Approved Plans"). The permittee must construct, install and operate the facility in strict compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the facility, must be submitted in a written request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change implicates a significant or substantial land-use concern.

B. Build-Out Period. In accordance with Section 20.54.060 (Time Limits and Extensions), the permit shall automatically expire two (2) years from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and/ or operate the approved facility, which includes, without limitation, any permits or approvals required by the any Federal, State or local public agencies with jurisdiction over the subject property, the facility or its use. The Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension received by the City prior to the automatic expiration date in this condition.

C. Maintenance Obligations; Vandalism. The permittee shall at all times 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 the 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 forty eight (48) hours after the permittee receives notice or otherwise becomes aware through its own staff including contractors that such graffiti or other vandalism occurred.

D. 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 facility or any use or activities in connection with the use authorized in the permit. 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.

E. Inspections; Emergencies. The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee may, but shall 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 shall be permitted to supervise the City or its designee while such inspection or emergency access occurs.

F. Contact Information. The permittee shall furnish the City Planning Division with accurate and up-to-date contact information for the facility, which includes, without limitation, direct telephone number and/or an email address. The permittee shall keep such contact information up-to-date at all times.

G. Indemnification.

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 (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 permittee.

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.

H. Revocation/Modification of Permit. The original approval authority may revoke or modify

the permit at any time based upon noncompliance with the Newport Beach Municipal Code or any approval conditions. In accordance with Chapter 20.68 (Enforcement), the approval authority may revoke the permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

I. Duty to Retain Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals (the records) issued in connection with the personal wireless service 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. If the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records shall be construed against the permittee.

20.49.120. Temporary Personal Wireless Service Facilities.

A. Temporary Personal Wireless Service Facilities—Non-Emergencies. The Zoning Administrator may approve or conditionally approve an LTP for a temporary personal wireless service facility for a period between four (4) days and ninety (90) days, inclusive, in accordance with Section 20.52.040 (Limited Term Permits) only when the Zoning Administrator finds all the following:

1. The proposed temporary personal wireless service facility shall not exceed fifty (50) feet in overall height above ground level;
2. The proposed temporary personal wireless service facility complies with all setback requirements applicable to the proposed location;
3. The proposed temporary personal wireless service facility shall not involve any excavation or ground disturbance;
4. The proposed temporary personal wireless service facility shall be compliant with all generally applicable public health and safety laws and regulations, which includes, without limitation, maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
5. The proposed temporary personal wireless service facility shall not create any nuisance or violate any noise limits applicable to the proposed location;
6. The proposed temporary personal wireless service facility shall be identified with a sign that clearly identifies the site permittee and contains a working telephone number to a live person who can exert power-down control over the antennas;
7. The proposed wireless temporary personal wireless service facility shall be removed within five (5) days after the expiration of the temporary use permit;
8. The applicant has not received any other temporary use permit for substantially the same location within the previous ninety (90) calendar days; and
9. The applicant has not sought approval for any permanent personal wireless service

facility in substantially the same location within the previous three hundred sixty five (365) days.

B. Temporary Personal Wireless Service Facilities—Emergencies.

1. Temporary personal wireless service facilities may be placed and operated within the City for more than three (3) days without a limited term permit only when a duly-authorized Federal, State, county or City official declares an emergency within the City, or a region that includes the City in whole or in part at the location of the temporary personal wireless service facility.
2. By placing the temporary personal wireless service facility pursuant to this subsection (B), the entity or person placing the temporary personal wireless service facility agrees to and shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all 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 for any and all Claims of any nature related to the installation, use, non-use, occupancy, removal, and disposal of the temporary personal wireless service facility; provided, however, the permittee and, if applicable, the property owner upon which the facility is installed, shall not defend, indemnify, or hold harmless the City, agents, officers, officials, employees and volunteers due to the negligence, gross negligence, or willful misconduct of the City, agents, officers, officials, employees, and volunteers.
3. The temporary personal wireless service facility shall prominently display upon it a legible notice identifying the entity responsible for the placement and operation of the temporary personal wireless service facility.
4. Any temporary personal wireless service facilities placed pursuant to this subsection (B) must be removed within: (a) five (5) days after the date the emergency is lifted; or (b) upon three (3) days’ written notice from the Director or City Manager; or (c) within one hour if required for public safety reasons by City police or fire officials (whichever occurs first). If the temporary facility is not removed as required in this subsection (B), the City may at its sole election remove and store or remove and dispose of the temporary facility at the sole cost and risk of the person or entity placing the temporary facility.

C. Temporary Personal Wireless Service Facilities—Construction.

Temporary personal wireless service facilities may be placed and operated within the City without an LTP only if they coincide with an active building permit for construction on the same site. This exception applies only when necessary to maintain pre-existing coverage while a permanent facility is being impacted by construction.

1. By placing the temporary personal wireless service facility pursuant to this subsection (C), the entity or person placing the temporary personal wireless service facility agrees to and shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all Claims brought against the City or its agents, officers, officials, employees or volunteers for any and all Claims

of any nature related to the installation, use, non-use, occupancy, removal, and disposal of the temporary personal wireless service facility; provided, however, the permittee and, if applicable, the property owner upon which the facility is installed, shall not defend, indemnify, or hold harmless the City, agents, officers, officials, employees and volunteers due to the negligence, gross negligence, or willful misconduct of the City, agents, officers, officials, employees, and volunteers.

2. The temporary personal wireless service facility shall prominently display upon it a legible notice identifying the entity responsible for the placement and operation of the temporary personal wireless service facility.
3. The proposed temporary personal wireless service facility shall not exceed fifty (50) feet in overall height above ground level.
4. Any temporary personal wireless service facilities placed pursuant to this subsection (C) must be removed, at no cost to the City, within: (a) five (5) days after the date the relevant building permit receives final inspection; (b) upon three (3) days' written notice from the Director or City Manager; or (c) within one hour if required for public safety reasons by City police or fire officials (whichever occurs first). If the temporary facility is not removed as required in this subsection (C), the City may at its sole election remove and store or remove and dispose of the temporary facility at the sole cost and risk of the person or entity placing the temporary facility.

D. The Zoning Administrator's decision pursuant to subsection (A) of this section shall be final and not subject to further administrative appeal.

20.49.130. Compliance Obligations.

An applicant or permittee shall not be relieved of its obligation to comply with every applicable provision in this Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.

20.49.140. Removal and Abandonment of Wireless Facilities.

A. **Discontinued Use.** Any permittee who intends to abandon or discontinue use of a personal wireless service facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The permittee or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the personal wireless service facility.
2. Transfer the rights to use the personal wireless service facility to another permittee and the permittee commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the personal wireless service facility and restore the site.

B. **Abandonment.** Any personal wireless service facility that is not operated for transmission

and/or reception for a continuous period of ninety (90) days or whose permittee did not remove the facility in accordance with subsection (A) of this section shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the permittee last known to use such facility and, if applicable, the owner of the affected real property, providing thirty (30) days from the date of the abandonment notice within which to complete one of the following actions:

1. Reactivate use of the personal wireless service facility.
2. Transfer the rights to use the personal wireless service facility to another permittee who has agreed to reactivate the facility within thirty (30) days of the transfer.
3. Remove the personal wireless service facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned personal wireless service facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned personal wireless service facility, the City may, but shall not be required to, store the removed facility or any part thereof. The owner of the premises upon which the abandoned facility was located and all prior permittees of the facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefor is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the permit as reimbursement for such costs. Also, in lieu of storing the removed facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the personal wireless service facility was located for the full amount of all costs incurred by the City for the removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City lien being added to the other costs listed in this subsection.

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