

**ORDINANCE NO. 2026-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADDING CHAPTER 13.22 (PERSONAL WIRELESS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY) AND AMENDING CHAPTER 20.49 (PERSONAL WIRELESS SERVICE FACILITIES) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TELECOMMUNICATION FACILITIES**

**WHEREAS**, Section 200 of the City Charter, of the City of Newport Beach (“City”), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California (“State”);

**WHEREAS**, 47 U.S.C. Section 332(c)(7)(B) prohibits state or local governments from regulating the placement or modification of personal wireless service facilities that have the effect of prohibiting personal wireless services;

**WHEREAS**, 47 U.S.C. Section 332(c)(7)(B)(iv) prohibits state or local governments from regulating the placement of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission’s (“FCC”) regulations concerning such emissions;

**WHEREAS**, the FCC issued a Declaratory Ruling and Third Report and Order on September 26, 2018, (“Declaratory Ruling”) adding 47 C.F.R. Sections 1.6001 to 1.6004 which adopted new rules substantially revising local authority to regulate the deployment of small wireless facilities;

**WHEREAS**, portions of the Declaratory Ruling, including the establishment of new 60-day and 90-day presumptively reasonable periods in which a city must act upon proposed small wireless facilities, were upheld in *City of Portland v. FCC*, 969 F.3d (9th Cir. 2020);

**WHEREAS**, the Telecommunications Act of 1996 preempts and declares invalid state rules that have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service;

**WHEREAS**, the California Legislature delegated to the California Public Utilities Commission (“CPUC”), the authority to regulate local telephone competition and issue certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service;

**WHEREAS**, Section 2902 of the California Public Utilities Code authorizes cities to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets and the location of the poles, wires, mains, or conduits on, under, or above any public streets;

**WHEREAS**, Section 7901 of the California Public Utilities Code (“Section 7901”) authorizes telephone and wireless corporations to construct telephone or wireless telecommunication lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, provided they do not to incommode the public use of the road or highway or interrupt the navigation of the waters;

**WHEREAS**, Section 7901.1 confirms the right of municipalities to exercise reasonable control of the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees;

**WHEREAS**, the courts have determined that a city may regulate the placement and appearance of telecommunications equipment installed in the public right-of-way, and that the city need not grant wireless providers blanket permission to install their equipment throughout a city, but may require wireless providers to go through reasonable site-specific permitting process procedures;

**WHEREAS**, Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes;

**WHEREAS**, 47 U.S.C. Section 1455 requires approval of certain eligible facilities requests for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such wireless tower or base station;

**WHEREAS**, under the police power of Article XI, section 7 of the California Constitution, confirmed in *T-Mobile West LLC v. City and County of San Francisco*, 6 Cal. 5th 1107 (2019), cities retain the full authority to regulate telecommunication facilities in the right-of-way to the extent such regulations are not inconsistent with general laws;

**WHEREAS**, cities also retain all local zoning powers not specifically preempted by federal law, which is confirmed by *T-Mobile S., LLC v. City of Roswell*, 574 U.S. 293, 303 (2015);

**WHEREAS**, unregulated wireless communication facilities may cause visual blight and diminution of property values absent reasonable standards;

**WHEREAS**, it is in the public interest to encourage wireless facilities to be located in non-residential zones and in locations other than areas immediately nearby residences and that such facilities blend in with the urban landscape;

**WHEREAS**, Chapter 20.49 (Wireless Telecommunications Facilities) of the Newport Beach Municipal Code ("NBMC") regulating wireless telecommunications facilities was last comprehensively updated in 2014 with a subsequent incorporation of Chapter 21.49 (Wireless Telecommunications Facilities) of the NBMC to regulate such facilities in the coastal zone;

**WHEREAS**, the City Council adopted Resolution No. 2021-42 on May 25, 2021, initiating updates to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC related to wireless service facilities in the right-of-way;

**WHEREAS**, the telecommunications and wireless landscapes continue to evolve with demand shifting decisively from traditional voice service to data-driven connectivity, with users now expecting high-bandwidth, seamless, and low-latency performance to support streaming, remote work, and real-time communication;

**WHEREAS**, the widespread decline of landlines and increased reliance on cellular networks have placed greater pressure on wireless infrastructure, while the proliferation of tablets, connected vehicles, and other smart devices has expanded both the number and diversity of devices competing for network capacity;

**WHEREAS**, as technology continues to advance at a rapid pace, these trends underscore the importance of maintaining regulatory and permitting processes that are clear, adaptable, and forward-looking, while preserving the City's ability to exercise thoughtful local oversight;

**WHEREAS**, the City Council conducted a study session regarding wireless facilities on January 13, 2026, wherein staff presented a three-pronged approach to enhance community connectivity through code updates, policy updates and partnerships to enhance connectivity within the community;

**WHEREAS**, a public hearing was held by the Planning Commission on March 5, 2026, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California to consider revisions to Chapters 20.49 (Wireless Telecommunication Facilities) and 21.49 (Wireless Telecommunication Facilities). A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

**WHEREAS**, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2026-006 by a unanimous vote (6 ayes, 0 nays, 1 absent) recommending the City Council approve revisions to Chapters 20.49 (Wireless Telecommunication Facilities);

**WHEREAS**, the City Council held a public hearing on June 9, 2026, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

**WHEREAS**, it is in the public interest for the City to update its regulations in a manner consistent with applicable law, including establishing reasonable regulations to promote and protect the City's aesthetic values by regulating the time, place, and manner of installation of personal wireless facilities.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** Chapter 13.22 (Personal Wireless Service Facilities in the Public Right-of-Way) is hereby added to Title 13 (Streets, Sidewalks and Public Property) of the Newport Beach Municipal Code as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**Section 2:** Chapter 20.49 (Wireless Telecommunications Facilities) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended as set forth in Exhibit "B," which is attached hereto and incorporated herein by reference.

**Section 3:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 4:** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

**Section 5:** The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the adoption of this ordinance is exempt from the provisions of CEQA under Class 3, section 15303. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This action 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 6:** Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.



## EXHIBIT "A"

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

#### Sections:

- 13.22.010. Purpose.
- 13.22.020. Definitions.
- 13.22.030. Applicability.
- 13.22.040. Departmental Standards, Forms, and Other Regulations.
- 13.22.050. Permits Required.
- 13.22.060. Permit Applications.
- 13.22.070. Applications Deemed Withdrawn.
- 13.22.080. Wireless Facility Permit Applications.
- 13.22.090. Section 6409(a) Permit Applications.
- 13.22.100. New Poles.
- 13.22.110. Permit Expiration and Deadlines.
- 13.22.120. Deemed Approved.
- 13.22.130. Radio Frequency Exposure Monitoring Requirements.
- 13.22.140. Maintenance Standards.
- 13.22.150. Expert Assistance.
- 13.22.160. Termination for Public Benefit.
- 13.22.170. Abandonment.
- 13.22.180. Revocation or Modification.
- 13.22.190. Preservation of City Rights.
- 13.22.200. Removal and Restoration.
- 13.22.210. Insurance, Indemnification, and Bonds.
- 13.22.220. Emergency Deployment.
- 13.22.230. Appeals.

#### **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 requirements of 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 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.

### **13.22.020. Definitions.**

The abbreviations, phrases, terms, and words used in this chapter shall have the meanings assigned to them in this section. 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.

"Antenna" means the same as defined in 47 C.F.R. Section 1.6002(b), as may be amended, which currently defines the term as an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location pursuant to FCC 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 C.F.R. Part 15.

"Base station" means the same as defined in 47 C.F.R. Section 1.6100(b)(1), as may be amended, 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. Section 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. Section 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, does not support or house equipment described in 47 C.F.R. Section 1.6100(b)(1)(i)-(ii).

“Eligible facilities request” means the same as defined in 47 C.F.R. 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.

“Existing” means the same as defined in 47 C.F.R. Section 1.6100(b)(5), as may be amended. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

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

“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 including, but not limited to, increasing the power output of the personal wireless service facility and physical changes to the personal wireless service facility.

“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 Section 6409(a) permit 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 U.S.C. 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 facility permit” means a permit issued pursuant to Section 13.22.080 by the City to install a personal wireless service facility at a specific location(s) in the City’s public right-of-way.

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

“Public right-of-way” means the same as defined in Section 13.20.020 of this Code, which currently defines the term as the improved or unimproved surface of 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 the City, however acquired.

“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.

“Section 6409(a) facility(ies)” or “6409(a) facility(ies)” means an eligible facility request approved pursuant to Section 6409(a).

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

“Site” means the same as 47 C.F.R. Section 1.6100(b)(6), as may be amended.

“Substantial change” or “substantially change the physical dimensions” means the same

as defined in 47 C.F.R. Section 1.6100(b)(7), as may be 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 ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) 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 (20) 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 (6) 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 (4) 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 ten percent (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 thirty (30) feet in any direction. The site boundary from which the thirty (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, unless the modification meets all of the criteria in subsections (i)-(v) or, as amended in 47 C.F.R. 1.6100(b)(7)(i)-(iv).

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

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

“Unlicensed wireless service” means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(iii), as may be 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 47 U.S.C. Section 303(v), as may be amended.

“Wireless Telecommunications Encroachment Permit” means a temporary encroachment permit granted by the Public Works Director 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.

### **13.22.030. Applicability.**

This chapter applies to any personal wireless service facility or 6409(a) facility in the public right-of-way as follows:

- A. Any personal wireless service facility or 6409(a) facility proposed to be located within the public right-of-way.
- B. Any application for a personal wireless service facility or 6409(a) facility for which an approval or permit has not been issued prior to the effective date of this chapter.

C. Exempt Facilities. Notwithstanding the foregoing, the provisions of this chapter shall not apply to any:

1. Personal wireless service facility, 6409(a) facility, 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 facility or 6409(a) facility that is constructed for City use or by the City to exclusively provide unlicensed wireless services including Wi-Fi;
3. Personal wireless service facility or 6409(a) facility that is installed or operated under the direction of the City or a City contractor;
4. Personal wireless service facility or 6409(a) facility used solely for wireless-based reading of water, gas, or electric meters;
5. Amateur radio facility(ies);
6. OTARD antenna(s);
7. Entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement; and
8. Personal wireless service facility or 6409(a) facility, or portion thereof, that is preempted by, or would otherwise violate, applicable federal or state law. Notwithstanding the foregoing, an exempt personal wireless service facility or 6409(a) facility shall be subject to the Public Works Director's determination that it be designed to minimize the extent of non-conformity with this Code.

**13.22.040. Departmental Standards, Forms, and Other Regulations.**

The City Council authorizes the Public Works Director to develop and update from time to time the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations, permit application forms, checklists, informational handouts and other related documents to implement this chapter. The City Council further authorizes the Public Works Director to establish reasonable written 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

or 6409(a) facilities.

### **13.22.050. Permits Required.**

A. Personal Wireless Facility Permit. A personal wireless facility permit shall be obtained prior to constructing, installing, modifying, collocating, relocating, or otherwise deploying a personal wireless service facility in the public right-of-way, except a 6409(a) facility regulated pursuant to Section 13.22.090 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 a personal wireless services facility pursuant to Chapters 21.49 (Wireless Telecommunication Facilities) and 21.52 (Coastal Development Permit Review Procedures).

B. 6409(a) Permit. A 6409(a) permit shall be obtained for an eligible facilities request pursuant to Section 13.22.090 of this chapter.

C. Master License Agreement. Notwithstanding subsections (A) and (B) of this section, a personal wireless service facility or 6409(a) facility is exempt from obtaining a personal wireless facility permit or 6409(a) permit provided the applicant and City have entered into the master license agreement template adopted by the City Council and approved as to form by the City Attorney. Any personal wireless facility or 6409(a) facility subject to the master license agreement shall comply with all other provisions of this chapter.

D. Wireless Telecommunications Encroachment Permit. No work in the public right-of-way shall occur unless a wireless telecommunications encroachment permit has been issued by the Public Works Director for the work described therein.

E. Other Permits and Regulatory Approvals. The applicant shall obtain all other required permits and approvals from other City departments, and state and federal agencies.

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

G. 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.

### **13.22.060. Permit Applications.**

A. Application Requirement. The City shall not accept, approve, or deny any personal wireless service facility or 6409(a) facility 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 and Fees. An application for a personal wireless service facility or 6409(a) facility request shall be filed with the Public Works Department on the appropriate forms, together with all required fees and/or deposits and all other information and materials specified by the Public Works Director for the application.

C. Any application proposing a new pole within the public right-of-way must include information to demonstrate that the new pole complies with the findings outlined in Section 13.22.100.

D. Batch Applications. An applicant may submit one batched application at a time, consisting of a maximum of fifty (50) separate personal wireless service facility applications. Each application in a batch shall 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 incomplete application shall be deemed withdrawn in accordance with Section 13.22.070 of this chapter. A new batch or application for a site with an existing application is prohibited until the prior batched application has been denied, deemed withdrawn, or approved.

E. Wireless Telecommunications Encroachment Permit Applications. An application for a wireless telecommunications encroachment permit shall comply with the procedures stated in this chapter, 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 in writing identifying the information needed to deem the application complete. The application shall be deemed withdrawn unless the applicant provides all required information within sixty (60) days of City's written notification of incompleteness. If the applicant submits a written request for extension showing good cause prior to the sixtieth (60) day, the Public Works Director may grant a written extension of no more than an additional thirty (30) days.

#### **13.22.080. Wireless Facility Permit Applications.**

A. Decision Notices. Within five (5) days of the Public Works Director's approval, conditional approval, or denial of a personal wireless facility permit application, the Public Works Director shall transmit a written determination to the applicant and post the written determination on the City's website. For any denial notice, the Public Works Director shall include the grounds for denial of the application.

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 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 (1) 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 reasonable condition(s) on any personal wireless service facility permit, deemed necessary or appropriate for the preservation of the public health and safety.

#### **13.22.090. Section 6409(a) Permit Applications.**

A. Decision Notices. Within five (5) days of the Public Works Director approval, conditional approval, or denial of a Section 6409(a) permit application, the Public Works Director shall transmit a written determination to the applicant. Additionally, within five (5) days of the Public Works Director approval, conditional approval, or denial of 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 state the grounds for denial of the application.

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 personal wireless service facility where the proposed 6409(a) facility will be located complies with all applicable requirements described in this chapter and the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations;
2. The personal wireless service facility and proposed 6409(a) facility complies with all other laws, including, without limitation, state and federal law;
3. The 6409(a) permit application meets the criteria of 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 (1) 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.

**13.22.100. New Poles.**

New poles in the public right-of-way to accommodate a personal wireless service facility that are not replacing an existing pole are prohibited unless the Public Works Director makes all of the following findings:

- A. The facility qualifies as a personal wireless service facility as defined in this chapter;
- B. The applicant provides a reasonable and clearly defined technical service objective to be achieved by the facility;
- C. The applicant provides 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
- D. The applicant demonstrates 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.

**13.22.110. Permit Expiration and Deadlines.**

A. Wireless Facility Permits and 6409(a) Permits.

1. Expiration. Unless a shorter period is provided herein or if preempted by law, a personal wireless service facility permit or 6409(a) permit shall be valid for a period of ten (10) years from the date of issuance, unless such permit is terminated pursuant to Section 13.22.160, revoked pursuant to Section 13.22.180, 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, the personal wireless facility permit, or 6409(a) permit shall automatically expire.

2. Permit Renewal. A permittee may apply for a new personal wireless service facility permit or 6409(a) permit renewal no earlier than eighteen (18) months nor later than six (6) months prior to expiration of the expiring personal wireless facility permit or 6409(a) permit. 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 Facility Encroachment Permit. For any personal wireless facility permit or 6409(a) permit 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 personal wireless facility permit or 6409(a) permit. Failure to obtain a wireless facility encroachment permit pursuant to this section shall automatically render the personal wireless facility permit or 6409(a) permit 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 the personal wireless facility permit or 6409(a) permit and complete the work within one hundred eighty days (180) from the date of commencement.

2. Extensions. The Public Works Director may grant a maximum of three (3) written extensions of time from the stated periods in subsection (B)(1) of this section, if the permittee provides good cause for the extension. An extension, if granted, may be for up to an additional sixty (60) days.

3. Permit Renewal. Before any work authorized under an expired wireless facility encroachment permit may resume, the permittee shall file an application for a personal wireless service facility permit renewal or Section 6409(a) permit renewal pursuant to the Public Right-of-Way Wireless Facility Standards and Regulations. Renewal of a personal wireless service facility permit, or Section 6409(a) permit 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.

**13.22.120. 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

to the personal wireless service facility or 6409(a) facility.

**13.22.130. Radio Frequency Exposure Monitoring Requirements.**

A. FCC Compliance. The City shall not approve any personal wireless service facility permit or 6409(a) 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 the City with 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 or 6409(a) 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 or 6409(a) facility do not exceed that disclosed in the pre-installation report submitted pursuant to subsection (B) of this section.

**13.22.140. Maintenance Standards.**

Any personal wireless service facility or 6409(a) facility shall comply at all times with the following maintenance standards:

A. General Maintenance Standards. Any personal wireless service facility or 6409(a) facility 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. Inspections, Reporting, and Correction of Deficiencies. The permittee of a personal wireless service facility or 6409(a) facility when directed by the City, shall perform an

inspection of the facility and submit a report to the Public Works Department. Additionally, the permittee shall complete any maintenance concerns identified by the City within thirty (30) days of the City's written notice after which the City reserves the right to take any action it deems necessary to rectify the issue, at the permittee's expense. The burden is on the applicant to demonstrate that the facility complies with the requirements herein and the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.

**13.22.150. Expert Assistance.**

If the City requires the services of a technical expert in processing any application received pursuant to this chapter, the applicant shall deposit a fee equal to the estimated cost of the consultant's services with the City. The City may require additional funds to cover the consultant's services required to process the application. If the actual fees exceed the amount deposited, 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 until the applicant fully reimburses the City for the City's consultant costs required to process the application.

**13.22.160. Termination for Public Benefit.**

Notwithstanding the expiration dates provided in Section 13.22.110, any personal wireless facility permit or 6409(a) permit granted pursuant to this chapter may be terminated upon twelve (12) months' prior written notice to the permittee, or less time in the event of an emergency situation as determined by the City, if the personal wireless service facility or 6409(a) 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 subsequent personal wireless service facility application within five hundred (500) feet will act as a replacement and shall not be subject to Section 13.22.100.

**13.22.170. Abandonment.**

A. Removal and Restoration Requirement. A personal wireless service facility or 6409(a) facility that is considered abandoned pursuant to Section 13.22.180(A)(3) shall be promptly removed and the area restored to its prior condition at the permittee's sole cost and expense within sixty (60) days. If there are two (2) or more users of a single facility, then the duty to remove all equipment shall apply unless the Public Works Director determines that removal of the abandoned personal wireless service facility or 6409(a) facility would not be in the public interest.

B. Notice of Intent to Abandon. 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.

C. Penalties for Failure to Comply. Failure to inform the Public Works Director of cessation of operations or abandonment of any personal wireless service facility or 6409(a) 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.

### **13.22.180. Revocation or Modification.**

In addition to any other remedies provided by law, any permit granted under this chapter may be revoked or modified for cause in accordance with the provisions of this section.

A. Initiation and Grounds for Revocation or Modification. When the Public Works Director has reason to believe that grounds exist for the modification or revocation of a personal wireless service facility or 6409(a) facility, the Public Works Director shall provide written notice by mail thereof to the permittee setting forth a statement of the facts and grounds. The permittee shall have fifteen (15) days from the date the notice is sent to submit a written response and supporting documentation to the Public Works Director prior to the Public Works Director rendering a decision. The Public Works Director may revoke or modify the personal wireless service facility or 6409(a) facility based on any of the following grounds:

1. The permittee obtained approval by means of fraud or misrepresentation of a material fact;
2. The permittee 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 or 6409(a) facility has not been operational for six (6) months or more;
4. The permitted facility is out of compliance with any condition of a permit or provision of this chapter;
5. 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

6. 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.
- B. Appeal. The permittee may request an administrative review by the City Manager within fifteen (15) calendar days of service of the Public Works Director's decision, in accordance with Section 1.08.080, by filing an appeal with the City Clerk.
- C. Hearing. The City Manager shall conduct a hearing within fifteen (15) calendar days of service of the appeal.
1. The City Manager may affirm, modify, or reverse the decision of the Public Works Director, or impose conditions or alternative remedies, based on the record and any additional information deemed relevant to the purposes of this chapter.
  2. Decisions under this section shall be upheld if supported by substantial evidence in the record.
  3. The City Manager may consider the totality of the circumstances and the purposes of this chapter in making determinations.
  4. The City Manager may consider any relevant evidence, whether or not it would be admissible in a court of law.
  5. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.
  6. Failure to Participate. Failure of the appellant to appear at the appeal hearing shall be deemed a withdrawal of the appeal and a waiver of the right to exhaust administrative remedies.
- D. Notice of Action. A written determination of revocation or modification shall be served on the permittee within ten (10) days of such determination.

### **13.22.190. 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 or 6409(a) 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 or 6409(a) 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 personal wireless service facility or 6409(a) 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 personal wireless service facility or 6409(a) 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 or 6409(a) facility pursuant to subsection (B) of this section, 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 the personal wireless service facility or 6409(a) facility. The permittee shall not have any claim if the City removes a personal wireless service facility or 6409(a) facility pursuant to Section subsection (B) of this section.

### **13.22.200. Removal and Restoration.**

A. General Provisions. Upon the expiration date of the personal wireless service facility permit or 6409(a) permit, earlier termination or revocation of the permit or abandonment of the personal wireless service facility or 6409(a) facility, the permittee shall remove its personal wireless service facility or 6409(a) facility including appurtenances 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 personal wireless service facility or 6409(a) facility shall be removed from the property, at no cost or expense to the City.

B. Restoration. 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

C. 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 personal wireless service facility permit or 6409(a) 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 personal wireless service facility or 6409(a) facility by the City at the permittee, owner, or operator's expense; and/or
3. Any other remedies permitted under this Code or under state or federal law.

**13.22.210. Insurance, Indemnification and Bonds.**

A. Insurance and Indemnification. Permittee, including its agents and contractors, shall comply with Chapter 1.07 of this Code prior to the issuance of any permit required by this chapter.

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 or 6409(a) facility, is fully and completely removed and the site returned to its original condition. 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.

**13.22.220. Emergency Deployment.**

In the event of an officially-declared federal, state, or local 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.

**13.22.230. Appeals.**

A. Appeals. Decisions or determinations made by the Public Works Director pursuant to Section 13.22.100 or Section 13.22.180(A) may be appealed to the City Manager by any aggrieved applicant.

B. Decision Final. Notwithstanding subsection (A) of this section, all other decisions or determinations of the Public Works Director provided under this chapter shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

**EXHIBIT “B”**  
**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. Design Standards.
- 20.49.080. Decisions.
- 20.49.090. Standard Conditions of Approval.
- 20.49.100. Temporary Personal Wireless Service Facilities.
- 20.49.110. 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, consistent with and to the extent permitted under federal and state law. The requirements of this chapter are intended to, and should 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 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 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 used in this chapter shall have the meanings assigned to them in this section or as may be appropriate, in Chapter 20.70, 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.

“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.

“Administrative Clearance” or “AC” means a ministerial, non-discretionary approval issued by the Review Authority for a Class 1 facility or 6409(a) facility.

“Antenna” as used in this chapter, means the same as defined in 47 C.F.R. Section 1.6002(b), as may be amended, which currently defines the term as an apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC 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 C.F.R. Part 15.

“Base station” means the same as defined in 47 C.F.R. Section 1.6100(b)(1), as may be amended, 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. Section 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. Section 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, does not support or house equipment described in 47 C.F.R. Section 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, and libraries.

“Collocation” means (a) for the purposes of any eligible facilities request, the same as defined by 47 C.F.R. 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 (1) personal wireless service facility installed at a single site; and (b) for all other purposes, has the same definition as is found in 47 C.F.R. 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.

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

“Distributed antenna system” or “DAS” means a network of one (1) or more antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one (1) 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 C.F.R. 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.

“Existing” means the same as defined in 47 C.F.R. Section 1.6100(b)(5), as may be amended. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

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

“Facility class(es)” 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 stealth personal wireless service 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 from public view.
2. Class 2 (Visible Antennas): a personal wireless service facility with antennas mounted on an existing non-residential building, structure, pole, light standard, utility tower, wireless tower and/or lattice tower outside of the public right-of-way.
3. Class 3 (Public Right-of-Way Installations): a personal wireless service facility with antennas installed on a structure located in the public right-of-way, regulated by Chapter 13.22.
4. Class 4 (Freestanding Structure): a personal wireless service facility with antennas mounted on a new freestanding structure, including but not limited to a faux tree, a monopole or lattice tower, constructed for the sole or primary purpose of supporting the personal wireless service facility.
5. Class 5 (Temporary): a facility including associated support equipment that is installed at a site on a temporary basis pursuant to a limited term permit or in connection with a special event upon the approval of a special events permit pursuant to Chapter 11.03 .

“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.

“Lattice tower” means a freestanding open framework structure used to support antennas, typically with three or four support legs of open metal crossbeams or crossbars.

“Monopole” means a single freestanding pole or pole-based structure solely used to act as or support a telecommunication antenna or antenna arrays.

“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 permit pursuant to this chapter to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities on private property.

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

“Public right-of-way” means the same as Section 13.20.020 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 the City, however acquired.

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

“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.

“Section 6409(a) facility(ies)” or “6409(a) facility(ies)” means an eligible facility request approved pursuant to Section 6409(a).

“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 shall 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 C.F.R. Section 1.6100(b)(7), as may be 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 ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) 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 (20) 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 (6) 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 (4) 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 ten percent (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 thirty (30) feet in any direction. The site boundary from which the thirty (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, unless the modification meets all of the criteria in subsections (i)-(v) or as amended in 47 C.F.R. Section 1.6100(b)(7)(i)-(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 sites-on-wheels, cells-on-light-trucks, 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 C.F.R. Section 1.6100(b)(9), as may be amended, which currently defines the term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

“Transmission equipment” means the same as defined in 47 C.F.R. Section 1.6100(b)(8), as may be amended, which currently defines the term as equipment that

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

“Unlicensed wireless service” means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(iii), as may be 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 45 U.S.C. Section 303(v)).

“Utility tower” means an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

#### **20.49.030. Applicability.**

A. **Applicable Facilities.** This chapter applies to any personal wireless service facility within the City and all 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 of this chapter shall apply to any of the following:

1. Personal wireless service facility proposed in the public right-of-way which shall be governed by Chapter 13.22;
2. Amateur radio facility(ies);
3. OTARD antenna(s);
4. Personal wireless service facility 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 facility 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-E, as may be amended;
6. Personal wireless service facility or associated infrastructure that is

developed, installed, managed, or operated by the City, for the City, or under the City's direction, or located on City-owned or City-held trust property, 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. Personal wireless service facility, or portion thereof, that is preempted by, or would otherwise violate, applicable federal or state law. Notwithstanding the foregoing, an exempt personal wireless facility shall be subject to the Director's determination that it be designed to minimize the extent of the non-conformity with the Code.

The exemptions provided herein shall not exempt the same personal wireless service facility from the requirements in Title 15.

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 require an AC. If a facility does not satisfy the requirements of a 6409(a) facility, the facility shall be reviewed pursuant to the review procedures in Table 4-1 of Section 20.49.050.

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.

#### **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 personal wireless service 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 district 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 or mixed-use development including equivalent planned community districts or specific plan districts with a maximum of four (4) allowable dwelling units.
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.**

Permit Required. Unless exempted pursuant to Section 20.49.030(B), any personal wireless service facility shall require a MUP, CUP, LTP, or AC as provided in Table 4-1, unless exempt pursuant to Section 20.49.040(B). Notwithstanding the 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.

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

<b>Facility Class</b>	<b>Permit</b>
Class 1	AC
Class 2	MUP
Class 3	See Chapter 13.22
Class 4	CUP
Class 5	LTP or See Chapter 11.03

A. Permit Review Procedures. An application for a MUP, CUP, or LTP shall be reviewed in accordance with Chapter 20.52 and Section 20.49.080.

B. 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 Chief of Police. The Chief of Police 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 any interference. 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.

C. Other Permits and Regulatory Approvals. In addition to any permit required under this chapter, the applicant shall obtain all other required permits and other regulatory approvals from the City, and state and federal agencies. Any permit granted under this chapter shall be subject to the conditions and/or other requirements in any other required permits or other regulatory approvals.

D. 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. Except for a 6409(a) facility, 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 and any other written rules developed by the Director.

B. Minimum Application Content. Any application for a personal wireless service facility shall be filed with the Community Development Department on the appropriate form, together with all required fees and/or deposits and all other information and materials specified by the Director for the application.

C. Applications Deemed Withdrawn. To promote efficient review and timely decisions by the City, if an application is deemed incomplete, the City shall notify the applicant in writing identifying the information needed to deem the application complete. The application shall be deemed automatically withdrawn without prejudice if the applicant fails to provide all required information within sixty (60) days of the City's written notice of incompleteness. If the applicant submits a written request for extension showing good cause prior to the sixtieth (60th) day, the Director may grant a written extension of no more than an additional thirty (30) days. Delays due to circumstances outside the applicant's reasonable control shall be considered good cause to grant the extension.

## **20.49.070. Design Standards.**

A. Generally Applicable Development Standards. Any new personal wireless service facility, or collocation or modification to an existing personal wireless service facility not subject to Section 6409(a) shall conform to the following generally applicable development standards.

1. Concealment. The personal wireless service facility is concealed to blend the equipment and other improvements into the natural and/or built environment consistent with the underlying zoning district and surrounding area.

2. Public View Protection. The personal wireless service facility, whether approved by administrative or discretionary review, complies with Section 20.30.100. Additionally, any potential impact(s) from a new or modified personal wireless service facility to public views that are not identified by the City's General Plan Natural Resources Element shall be evaluated to determine if inclusion in the element would be appropriate. If deemed appropriate for inclusion, the potential impacts to such public views shall be considered.

3. Height. The personal wireless service facility does not exceed the maximum allowable height limit for flat structures pursuant to Section 20.30.060(C)(2) unless the review authority approves a CUP and makes all of the required findings in Section 20.49.080(C) to exceed the maximum height limit by no more than fifteen (15) feet. The personal wireless service facility shall comply with height restrictions or conditions, if any, required by the FAA, and shall comply with Section 20.30.060(E) as may be in force at the time the personal wireless service facility is permitted or modified.

4. Setbacks. The personal wireless service facility complies with all required setbacks for the zoning district in which the facility is proposed.

5. Noise. The personal wireless service facility and all accessory and transmission equipment comply with all noise regulations, including, without limitation, Chapter 10.26, and shall not exceed either individually or cumulatively, the applicable ambient noise limits. The review authority may condition the project to incorporate appropriate noise-baffling materials and/or design strategies to meet the applicable noise limit.

6. Landscaping. The personal wireless service facility application includes landscape features when proposed in a landscaped area. The review authority may condition additional landscaping to screen or conceal the facility from public view and/or avoid or mitigate potential adverse impacts on adjacent properties.

The permittee shall be responsible for maintenance of and replacement of all landscaping.

7. Security Measures. The personal wireless service facility incorporates reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft and vandalism. Security measures shall be designed to enhance concealment to the maximum extent possible. The review authority may require additional concealment elements deemed necessary to blend the security measures and other improvements into the natural and/or built environment.

8. Backup Power Sources. The review authority may condition permanent backup power sources and/or generators. 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. Exterior lighting of the personal wireless service facility shall be limited to: (a) lighting 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 shall be installed in locations and within enclosures that avoid illumination impacts on other properties to the maximum extent feasible. Aircraft warning lighting required by the FAA or FCC shall be shielded from the interior of any human-occupied structure's views to the maximum extent feasible.

10. Signs and Advertising. The personal wireless service facility shall include discrete signage that continuously and accurately identifies the equipment, the permittee's site name or identification number, as well as a local or toll-free number to the permittee's network operations center. The personal wireless service facility shall 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. The personal wireless service facility is designed and sited in a manner that contemplates future collocations and facilitates the integration of additional equipment 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 will be routed underground to the extent feasible in conduits large enough to accommodate future collocated facilities. The review authority shall not approve new overhead utility lines or service drops merely because undergrounding would increase the project cost.

13. Compliance with Laws. The personal wireless service facility is designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which include, without limitation, the California Building Standards Code, General Plan and any applicable specific plan, and this Code.

14. Nonconformities. A proposed or modified personal wireless service facility shall not create any new or increased nonconformity as defined in this Title 20, 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. In addition to the general design standards set forth in subsection (A) of this section, any new personal wireless service facility, or collocation or modification to an existing personal wireless service facility not subject to Section 6409(a) shall conform to the following class-specific design standards.

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 (6) feet above ground level so that all equipment is adequately screened from public view(s) including at higher elevations, 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. The review authority may condition additional screening to avoid adverse impacts to views from land or buildings at higher elevations.

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 non-reflective 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 (Personal Wireless Service Facilities in the Public Right-of-Way).

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 appear unnatural 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, new comparable living vegetation may be conditioned 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 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.

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. The review authority may condition additional screening to avoid adverse impacts to views from land or buildings at higher elevations.

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, underground vault, or security

enclosure consisting of walls and/or landscaping.

d. Landscaping. 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 surrounding area.

e. Screen Enclosures. Screening enclosures shall be made of non-reflective material and painted to blend with surrounding materials and colors. Additionally, screening enclosures shall utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design with no more than one-inch gaps or an alternate enclosure design approved by the review authority.

f. Undergrounding and Venting. If placed in an underground vault, flush-to-grade vents, or alternatively, vents may extend no more than twenty-four (24) inches above the finished grade and shall be screened from public view .

#### **20.49.080. Decisions.**

##### **A. Notice.**

1. Hearing Notices. An application for a MUP, CUP, or LTP shall require public notice in accordance with Chapters 20.52 and 20.62 prior to a public hearing and decision on any application for a personal wireless service facility.

2. Decision Notices. After the review 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 review authority shall send a written determination to the applicant and any other party entitled to receive notice.

B. General Findings for Approval. The review authority may approve or conditionally approve an application for a personal wireless service facility only after first making the applicable required findings for a MUP or CUP pursuant to Section 20.52.020, or LTP pursuant to Section 20.52.040, along with each of the following findings:

1. The proposed personal wireless service facility is visually compatible with the surrounding neighborhood;

2. The proposed personal wireless service facility complies with height, location and design standards, as provided in this chapter;

3. The proposed personal wireless service facility complies with all applicable development standards described in Section 20.49.070;
4. The applicant demonstrates that the proposed facility complies with all applicable FCC rules and regulations for human exposure to RF emissions;
5. The applicant demonstrates a good-faith effort to identify and evaluate more-preferred locations and potentially less-intrusive designs; and
6. The applicant has provided the review 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.

C. Findings to Increase Height. The review authority may approve or conditionally approve an application for a personal wireless service facility to exceed the maximum allowable height by no more than fifteen (15) feet only after making the findings set forth in subsection (B) of this section, the applicable required findings for a MUP or CUP pursuant to Section 20.52.020, or LTP pursuant to Section 20.52.040, and each of the following findings:

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;
3. The personal wireless service facility complies with the height restrictions or conditions, if any, required by the FAA; and
4. The personal wireless facility complies with Section 20.30.060(E).

D. Conditional Approvals. The review authority may impose any reasonable conditions on any MUP, CUP or LTP related and proportionate to the subject matter in the application, as the review 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.

E. Appeals. Except for an AC, any appeal of the decision of the review authority of an application for a personal wireless service facility shall be processed in compliance with Chapter 20.64. Notwithstanding the foregoing, the environmental effects from RF emissions that comply with all applicable FCC regulations shall not be grounds for an appeal.

#### **20.49.090. Standard Conditions of Approval.**

In addition to all other conditions adopted by the review authority and required by this Code, all personal wireless service facilities, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the following:

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 review 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, 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 (1) 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. 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 of 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 comply at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law 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. Insurance and Indemnification. The permittee shall meet all insurance requirements and defend, indemnify and hold harmless the City pursuant to Chapter 1.07.

H. Revocation/Modification of Permit. The original review authority may revoke or modify the permit based upon noncompliance with the Code or any approval conditions in accordance with Chapter 20.68.

I. Duty to Retain Records. The permittee shall 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, the 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.

**20.49.100. 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, 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 include, 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. The Director may approve or conditionally approve the placement and operation of a temporary personal wireless service facility 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. 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. Any temporary personal wireless service facilities placed pursuant to this subsection (B) shall be removed within by the permittee: (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 (1) 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 elect to remove and either store or dispose of the temporary facility at the sole cost and risk of the permittee.

C. Temporary Personal Wireless Service Facilities—Construction.

1. The Director may approve or conditionally approve a temporary personal wireless service facility without a limited term permit 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.

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 facility placed pursuant to this subsection (C) shall be removed, at no cost to the City, by the permittee 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 (1) 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 elect to remove and either store or dispose of the temporary facility at the sole cost and risk of the permittee.

D. By placing a temporary personal wireless service facility pursuant to this section, the entity or person placing the temporary personal wireless service facility agrees to and shall meet all insurance requirements and defend, indemnify and hold harmless the City pursuant to Chapter 1.07.

#### **20.49.110. Removal and Abandonment of Wireless Facilities.**

A. Discontinued Use. Any permittee who intends to discontinue use of a personal wireless service facility shall notify the Director by certified mail no less than thirty (30) days prior to such discontinuation of use. The permittee or owner of the affected real property shall have ninety (90) days from the date of discontinuation, or a reasonable additional time as may be approved by the Director, within which to complete one (1) 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 new permittee commences use within a reasonable period of time as determined by the Director.
3. Remove the personal wireless service facility and restore the site.

B. Abandonment. Any personal wireless service facility that is not operational for six (6) months or more and has not been removed 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 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; or
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 to comply 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 therefore 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.