

## CHAPTER 17.45

### WIRELESS FACILITIES ON PRIVATE PROPERTY

#### 17.45.010 Purpose and Intent

- A. The City of Carmel-by-the-Sea (the “City”) intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal on private property within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this chapter are intended to, and should be applied, consistent with federal and state law, to protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by (1) ensuring that an appropriate balance between public and private interest is maintained; (2) protecting the City’s unique visual character and property values from potential adverse impacts and/or visual blight created and/or exacerbated by wireless communications infrastructure; (3) protecting and preserving the City’s environmental resources; and (4) protecting and promoting the City’s residential neighborhoods and other family-oriented environments, such as parks, trails and beaches; and (5) ensuring appropriate placement of high-quality, advanced wireless services for the City’s residents, businesses and visitors.
- B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to violate any applicable federal or California law.

#### 17.45.020 Definitions

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The abbreviations, phrases, terms and words used in this chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this chapter will have their ordinary meanings. All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

The definitions in this chapter shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in this code. However, if any definition assigned to any phrase, term or word in this chapter conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- A. **“accessory equipment”** means equipment other than antennas used in connection with a wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- B. **“amateur station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- C. **“antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- D. **“approval authority”** means the City official or appointed/elected body responsible for application review and vested with authority to approve or deny such applications.
- E. **“architecturally integrated”** means stealth concealment that mimics the existing architecture, design, materials and finishes of the underlying structure such that the wireless facility appears to be something other than a wireless facility and part of the original building’s or structure’s design.
- F. **“City Administrator”** means City of Carmel-by-the-Sea City Administrator or the City Administrator’s designee.
- G. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.
- H. **“eligible facilities request”** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- I. **“environmentally controlled underground equipment vault”** means a below-grade chamber for electronic equipment that protects against heat, humidity, water intrusion and fire.

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- J. **“FCC”** means the “Federal Communications Commission”, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- K. **“Fire Safety Authority”** means the Chief Building Official of the City of Carmel-by-the-Sea or the Fire Safety Authority’s designee.
- L. **“historic resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources, the “Carmel Inventory of Historic Resources” or the “Carmel Inventory” as defined in code **Section 17.32.230**, the “Carmel Register of Historic Resources” or the “Carmel Register” as defined in code **Section 17.32.230**, or any “historic resource” or “historical resource” as defined in code **Section 17.32.230**. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- M. **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- N. **“personal wireless service facilities”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- O. **“personal wireless services”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- P. **“public right-of-way”** or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- Q. **“RF”** means radio frequency.
- R. **“shot clock”** means the time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- S. **“stealth”** means concealment elements, measures and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses to completely screen all transmission equipment from public view

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and architecturally integrate the wireless facility into the built environment such that, given the particular context, the average, untrained observer would not recognize the structure as a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure; (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality; and (3) concealment elements, measures and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses

T. **“wireless facility”** means a personal wireless service facility.

**17.45.030 Applicability**

A. **General.** This chapter applies to all requests for the City’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on private property within the City’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to this [Section 17.45.030](#).

**Wireless Facilities on City Property.** This chapter applies to permit applications, submitted to the City in its regulatory capacity, for wireless facilities on property or structures owned or controlled by the City and not located within the public rights-of-way; provided, however, that this chapter does not govern whether or under what terms and conditions the City, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a wireless facility on such property or structures

B. **Wireless Facilities within the Public Rights-of-Way.** All applications for wireless facilities located within the public rights-of-way shall be exempt from this [Chapter 17.45](#) but subject to the provisions in [Chapter 17.46](#).

C. **Eligible Facilities Requests.** All eligible facilities requests for collocations or modifications to existing wireless facilities located on private property shall be exempt from this [Chapter 17.45](#) but subject to the provisions in [Chapter 17.47](#).

D. **Other Exemptions.** This chapter shall not be applicable to the following:

1. wireless facilities operated by the City for public purposes;
2. wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber’s private residence, such as a “femtocell” or indoor distributed antenna system;
3. OTARD antennas;

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4. antennas and related transmission equipment used in connection with a duly authorized amateur station; or
5. wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

**17.45.040 Required Permits and Other Approvals**

- A. **Conditional Use Permit and Discretionary Design Review.** A conditional use permit and design review, subject to the Planning Commission's review and approval, is required for all new wireless facilities on private property.
- B. **Other Permits and Regulatory Approvals.** In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as a Coastal Development Permit and/or approvals for compliance with the California Environmental Quality Act) as may be required by any other federal, state, regional or local government agencies, which includes without limitation other any permits and/or approvals required by this code. Furthermore, any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

**17.45.050 Permit Applications**

- A. **Application Required.** The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the City or the Director may establish from time to time in any publicly-stated format.
- B. **Application Content.** All applications for a permit must include all the information and materials required by the Director for the application. The Director is authorized to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated and available. All applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

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- C. **Application Fee/Deposit.** The applicant shall submit the full application fee established by City Council resolution at the time of application. If no application fee has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be refunded to the applicant.
- D. **Voluntary Pre-Application Conferences.** The Director shall provide prospective applicants with the opportunity to schedule and attend a pre-application conference with department staff. The City strongly encourages, but does not require, pre-application conferences for all proposed projects. This voluntary pre-application conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential stealth or concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-application conference.
- E. **Application Submittal.** All applications submitted under this chapter must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in writing within five working days after the Community Planning and Building Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.
- F. **Voluntary Community Meetings.** The City strongly encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary community meeting with all interested members of the public. Community meetings may be conducted before or after submittal. This voluntary community

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meeting does not cause the FCC shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding proposed project. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposed project. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The City seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals. Public notice for a community meeting should be given in the manner described in [Section 17.45.060.C](#), except that the applicant is responsible for the cost and implementation of noticing.

- G. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the department within 90 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.
- H. **Peer and Independent Consultant Review.**
1. **Director's Authorization to Retain Consultants.** The Director is authorized to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and expertise in telecommunications in connection with any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (1) permit application completeness and/or accuracy; (2) compliance with applicable regulations for human exposure to RF emissions; (3) whether and to what extent a proposed project will comply with applicable laws; (4) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (5) any issues related to an exception requested by the applicant pursuant to [Section 17.45.120](#). The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.

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2. **City's Reimbursement; Standard Deposit Agreements.** Subject to applicable laws, if the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs incurred by the City in connection with the services provided, which may include, without limitation, actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings related to the permit application and the City's cost to administer the independent consultant contract. The Director is authorized to develop, publish and, from time-to-time, update a standard deposit agreement consistent with this [Section 17.45.050.H](#). The City shall not issue any building, construction or encroachment permits to any applicant with any unpaid deposit requests or invoices by the City.
  
3. **Independent Consultants Retained by Fire Safety Authority.** The Fire Safety Authority has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Safety Authority in connection with any application. The Fire Safety Authority may request independent consultant review on any matter committed to the Fire Safety Authority for review or approval. Subject to applicable laws, if the Fire Safety Authority elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs in connection with the services provided, which may include without limitation any actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described in this [Section 17.45.050.H](#) shall be applicable to independent consultant review required by the Fire Safety Authority.

**17.45.060 Public Notices**

- A. **Posted Notice.** Within five days after an application is duly filed with the Director, the applicant shall (1) post notice/sign on the proposed project site in a location near to and visible from the public rights-of-way and (2) provide the Director with evidence that such notice/sign has been posted. The applicant is responsible for maintaining and replacing the notice/sign as necessary during the duration of the application review process until the approval authority acts on the application. The notice/sign shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The notice/sign shall be at least two feet wide by three feet tall, placed in a conspicuous location at the project site where it will be visible from the nearest public right-of-way. The notice/sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the department on placement locations to avoid any potential hazards. In addition to the content requirements in [Section 17.45.060.D](#),



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the posted notice shall include a URL for the City's website page where application information can be obtained once uploaded in accordance with [Section 17.45.060.B](#).

- B. **Website Notice.** Within 10 days after an application is duly filed with the department, the Director shall post notice on the City's website.
- C. **Public Hearing Notice.** At least 10 calendar days before any public hearing in connection with an application for a wireless facility, the Director shall: (1) mail notice to all real property owners as shown on the most recent equalized assessment roll within 300 feet from the property on which the wireless facility is proposed; (2) mail notice to each physical address for all properties within 300 feet from the property on which the wireless facility is proposed; and (3) publish notice in at least one newspaper of general circulation within the City. In addition to the content requirements in [Section 17.45.060.D](#), public hearing notices shall also include the date, time and location for the public hearing and the URL to the project webpage on the City's website or written instructions on how to find the project webpage.
- D. **Decision Notices.** Within five calendar days after the approval authority acts on an application governed under this chapter or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. If the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain (1) the reasons for the denial and (2) instructions for how and when to file an appeal.
- E. **Notice Content.** In addition to any other requirements under [Sections 17.45.060.A, B and C](#), public notices required under this chapter shall include: (1) the project location with both a street address (or approximate street address if applicable) and GPS coordinates; (2) the City's permit application number; (3) a general project description with photo simulations; (4) the applicant's identification and contact information as provided on the application submitted to the City; (5) contact information for the department for interested parties to request additional information and submit comments; and (6) a statement as to whether a public hearing will be required for the application or not.

#### **17.45.070 Approvals, Denials and Appeals**

- A. **Required Findings for Approval.** The approval authority may approve wireless facility applications only when the approval authority makes all the following findings:
  - 1. the proposed wireless facility is in a preferred location as defined in this chapter; or the proposed wireless facility is in a discouraged location as defined in this chapter, and the applicant has demonstrated through a

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meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;

2. the proposed wireless facility complies with all applicable development standards in this code and any other applicable regulations;
3. the applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
4. all public notices required for the application have been given; and
5. all the other findings required for a conditional use permit, Coastal Development Permit (if required), and discretionary design review approval pursuant to [Section 17.45.040.B](#) have been made.

**B. Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, this code, or this chapter.

**C. Appeals.** Within 10 calendar days after the approval authority approves or denies any application under this chapter, any interested person may file an appeal for cause in accordance with the provisions in [Section 17.04.220](#) of this code; provided, however, that (1) the notice provisions in this chapter shall control over those in [Section 17.04.220](#) and (2) appeals from an approval shall not be permitted when based on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines.

#### **17.45.080 Location Standards**

**A. Preface to Location Standards.** This section sets out criteria to determine the preferred location and support structure for wireless facilities. The City considers the most preferred location and support structure to be the least intrusive means for an applicant to provide its services to the public. [Subsection B](#) describes general plan areas and land use designations where wireless facilities are generally most preferred. [Subsection C](#) provides specific locations where wireless facilities are discouraged. It is possible for a proposed facility to be simultaneously in a "preferred" and "discouraged" location, such as a commercial use that happens to be within 250 feet from an historic structure. In such cases, the location shall not be deemed to be a "preferred" location. Finally, in situations

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where the applicant must consider alternative sites, preferences for facilities on land use classifications and support structures are ranked in **subsection D** and **subsection E**, respectively.

- B. Preferred Locations.** All applicants must, to the extent technically feasible and potentially available, propose new facilities in a preferred location. The following locations are all considered “preferred locations” so long as the site is not simultaneously in a discouraged location under Section 17.45.080.C:
1. parcels within a land use designation of “Central Commercial”;
  2. parcels within a land use designation of “Service Commercial”;
  3. parcels within a land use designation of “Community and Cultural”; and
  4. parcels within a land use designation of “Residential and Limited Commercial”.
- C. Discouraged Locations.** When no preferred location would be technically feasible and potentially available, the applicant may propose a new facility in a discouraged location. Applications for discouraged locations must include a written justification, supported by factual and verifiable evidence, that shows no location with a more preferred land use designation is technically feasible and potentially available. The following locations are all “discouraged” and ordered from least discouraged to most discouraged:
1. parcels within a land use designation of “Improved Parklands”;
  2. any location where the facility would be visible from a scenic corridor;
  3. parcels within a land use designation of “Natural Parklands and Preserves”;
  4. parcels within a land use designation of “Theatrical”;
  5. parcels within a land use designation of “Senior Citizen Facility”;
  6. parcels within a land use designation of “Multi-Family Residential”;
  7. parcels within a land use designation of “Single-Family Residential”;
  8. any location where the facility would be within 250 feet from a local, state or nationally designated historic property, structure, or district, or any property, structure, or district eligible for local, state or national historic designation;
  9. any location where the facility would be within 300 feet from a structure approved for residential use.
- D. Ranked Location Preferences.** Within any area plan, community plan, or plan area, applicants must propose new facilities on parcels with the most preferred land use designation whenever technically feasible and potentially available. Applications must include a written justification as part of their application submittal, supported by factual and verifiable evidence, that shows no location with a more preferred land use designation is technically feasible and available, unless the proposed facility is in the most preferred land use designation or is a stealth facility in a preferred location. The following land use designations are ranked from most preferred to least preferred:

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1. Central Commercial;
2. Service Commercial;
3. Community and Cultural;
4. Residential and Limited Commercial;
5. Improved Parklands;
6. Natural Parklands and Preserves;
7. Theatrical;
8. Senior Citizen Facility;
9. Multi-Family Residential; and
10. Single-Family Residential.

E. **Support Structures.** All applicants shall propose wireless facilities on the most-preferred support structure that is technically feasible and available. Any application to place a wireless facility on a support structure other than the most-preferred structure under this Section 17.45.080.E must include a written justification, based on factual and verifiable evidence, that shows no more-preferred structure is technically feasible and available.

1. **Support Structure Preferences.** The City's preferences for support structures are as follows, order from most preferred to least preferred:
  - a. collocation on an existing structure with existing wireless facilities;
  - b. installations on a rooftop;
  - c. installations on a building facade; and
  - d. installations on a new freestanding structure located outside the public rights-of-way.
2. **Prohibited Support Structures.** Wireless facilities shall not be installed on trees, including live, dead, partially cut down or limbed trees.

**17.45.090 Design Standards**

- A. **Stealth/Concealment.** All wireless facilities must be stealth to the maximum extent feasible. Colors and materials for wireless facilities shall be non-reflective and chosen to minimize visibility to the greatest extent feasible.
- B. **Least Visible Equipment.** The applicant must use the smallest and least visible antennas and accessory equipment possible to accomplish the service objectives.
- C. **Overall Height.** To maintain the natural appearance of the community, wireless facilities may not exceed more than 10 feet above the average height of mature natural trees within the vicinity or the maximum height allowed by this code for the underlying zoning district where the facility is proposed, whichever is more restrictive. If the applicant plans new natural trees around the proposed wireless

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facility, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.

- D. **Equipment Mounting Height.** The bottom of any antenna or accessory equipment must be mounted at least 8.5 feet above grade, measured as the plum vertical distance from the bottom of the antenna or accessory structure to the grade.
- E. **Finishes.** All exterior surfaces shall be painted, colored, and/or wrapped in flat, non-reflective hues that match the underlying support structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the approval authority's prior approval.
- F. **Setbacks.** All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel; notwithstanding the foregoing, no wireless facilities shall be installed (in whole or in part) in the front setback applicable to structures on the underlying parcel.
- G. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- H. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- I. **Trees and Landscaping.** Wireless facilities shall not be installed (in whole or in part) within any tree drip line. Wireless facilities may not displace any existing tree or landscape and/or hardscape features. All wireless facilities proposed to be placed in a landscaped area must include landscape and/or hardscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The existing native vegetation shall be maintained to the maximum extent feasible. The approval authority may require additional landscape features to screen the wireless facility from public view,

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avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be native and/or drought-resistant.

- J. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- K. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth techniques, and the approval authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any audible sirens or other sounds.
- L. **Secondary Power Sources.** The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis. No permanent diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residential structure are permitted absent a showing of extraordinary need, such as a declared public emergency; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- M. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, existing parking and access should be used for ingress to and egress from new wireless facilities rather than constructing new parking or access improvements to access the wireless facility. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use and comply with applicable safety codes.
- N. **Fire Safety.** All wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the Fire Safety Authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3) surge protection devices capable of mitigating significant electrical disturbances that may enter the wireless facility via conductive cables;

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(4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (5) monitored automatic fire notification and suppression systems for all wireless facilities as approved by the applicable Fire Safety Authority.

- O. **Future Expansion.** To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive this requirement when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- P. **Utilities.** All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse or similar enclosure. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. No new overhead utility lines or service drops are permitted merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and non-stealth antenna.
- Q. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, this code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- R. **Towers and Freestanding Wireless Facilities.** In addition to all other design requirements in this chapter, the following provisions shall be applied to an application for a tower or other freestanding wireless facility:
1. **Quantity.** No more than one tower or other freestanding wireless facility shall be permitted on any one parcel.
  2. **Placement.** Towers or other freestanding wireless facilities shall be located near existing structures or trees at similar heights for screening purposes wherever feasible, but shall not be located in any front setback or between the face of a building and a public right-of-way, bikeway or park.

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3. **Height Limitation.** All towers and freestanding wireless facilities shall be designed at the lowest possible height necessary to achieve the applicant's service objectives with the slimmest profile possible for structural support. All towers and other freestanding wireless facilities shall not exceed the height limit for structures in the applicable zoning district. The height of a tower or freestanding wireless facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower or freestanding wireless facility itself to the top of the pole or other support structure, highest antenna, piece of accessory equipment or stealth element, whichever is highest.
  4. **Fall Zone.** All towers and freestanding wireless facilities must be setback from habitable structures approved for residential occupancy by a distance equal to one horizontal foot for every foot of the tower height, or the distance from the highest engineered break point to the top of the tower. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
  5. **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.
  6. **Ground-Mounted Equipment.** All ground-mounted equipment must either be concealed underground in an environmentally controlled vault, or concealed within an existing or new structure, or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional stealth elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- S. **Building-Mounted Wireless Facilities.** In addition to all other design requirements in this chapter, the following provisions shall be applied to an application for a wireless facility installed on a building rooftop or facade:
1. **Height Limitations.** Building-mounted wireless facilities shall not exceed the height limit for structures in the applicable zoning district. Notwithstanding the



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prior sentence, antennas mounted flush on the facade of an existing building that exceeds the height limit for structures in the applicable zoning district may have a height equal to the height of the building. All equipment mounted on rooftops shall be as low as possible to avoid visibility from publicly accessible areas around the building.

2. **Architectural Integration.** To the extent feasible, new non-tower wireless facilities shall be stealth, completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). When integration with existing building features is not feasible, the facilities shall be stealth, completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
  3. **Rooftop Wireless Facilities.** All rooftop-mounted equipment must be screened from public view, including from higher elevations, with stealth techniques and concealment measures that match the underlying structure in proportion, quality, architectural style and finish to the maximum extent practicable. All roof-mounted equipment and cabinets must be set back a minimum of 10 feet from the edge of the roof.
  4. **Facade-Mounted Wireless Facilities.** When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this [Section 17.45.090.R.4](#). All facade-mounted equipment must be stealth and concealed behind screen walls and mounted as flush to the facade as practicable. No "pop-out" screen boxes are permitted unless the design is architecturally consistent with the original building or support structure. Exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade are prohibited. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
- T. **Historic Resources.** Nothing in this chapter shall be construed or applied to limit the City's authority to enforce other laws or regulations intended to protect or preserve historic resources. Any wireless facility that adversely impacts any historic resource shall not be approved without an exception pursuant to [Section 17.45.120](#).
- U. **Administrative Design Guidelines.** The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable design

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regulations to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this chapter and the design guidelines adopted under this section, the development standards specified in this chapter shall control

**17.45.100 Standard Conditions for Approved Permits**

- A. **General.** Except as may be authorized in **Section 17.45.100.B**, all wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the following conditions:
1. **Permit Term; Approval Applies to Land.** This permit will automatically expire 10 years and one day from its issuance unless the City establishes a shorter term for public safety or substantial land use reasons pursuant California Government Code § 65964(b). Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This permit shall run with the land and shall be valid for the term specified in these conditions of approval. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
  2. **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless facility has complied with all the conditions of approval associated with this permit and will comply with all applicable provisions in this code that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this code or other applicable Laws. Upon renewal, this permit will automatically expire 10 years and one day from its issuance. Additional permit renewals shall be subject to the procedures in this condition.
  3. **Future Collocations.** The permittee shall be willing to allow other carriers and site operators to collocate transmission equipment with the wireless facility, to the extent such facility or portions thereof are owned or controlled by the permittee, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this code.

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4. **CPUC GO-159A Certification.** Within 15 business days after the City issues a permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Administrator.
5. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
6. **Compliance with Approved Plans.** Before the permittee submits any applications to the building official required to commence construction in connection with this permit, the permittee must incorporate this permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, 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 wireless facility, must be submitted in a written request subject to the Director's prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the original approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
7. **Build-Out Period.** This permit will automatically expire 36 months from the approval date (the "**Build-Out Period**") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, substantial and reliable written evidence demonstrating justifiable cause for the six-month extension submitted. If the Build-Out Period (and any extension) finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, which includes without limitation all application fees, for the same or a substantially similar project.
8. **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to

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commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices (“**BMPs**”) pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee’s installation of such temporary BMPs.

9. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations at the wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the Approved Plans. Such documentation shall include, without limitation, as-built drawings prepared by a California licensed civil engineer, GIS data and site photographs. In a written notice to the permittee, the Director shall either certify that the wireless facility complies with the Approved Plans or order the permittee to correct any noncompliance.
10. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code compliant condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to normal construction work hours specified in this code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
11. **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee’s direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
12. **Compliance with Applicable Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“**Laws**”) applicable to the

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permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the wireless facility that certifies that the wireless facility is in compliance with all such Laws. The Director may order the facility to be powered down if, based on objective evidence, the Director finds that the wireless facility is in fact not in compliance with any Laws applicable to human exposure to RF emissions until such time that the permittee demonstrates actual compliance with such Laws. 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. No failure or omission by the City to timely notice, prompt or promptly enforce compliance with any applicable provision in this code, this chapter, any permit, any permit condition or any applicable Laws or regulations, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in this code, this chapter, any permit, any permit condition or any applicable Laws or regulations.

13. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by this code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in this code, the Director, in addition to any other actions or remedies authorized by the permit, this code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in

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connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.

14. **Annual Affirmation of Radio Frequency Standards Compliance.** On or before January 30th in each calendar year, the permittee acknowledges and agrees that the permittee shall submit: (1) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the wireless facility under penalty of perjury, that the installation is operated in compliance with 47 U.S.C. § 324; (2) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the wireless facility under penalty of perjury, that the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC; and (3) a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the facility. All radio frequency emissions on all frequency bands must be shown on the Appendix A form(s). All radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."
15. **Interference with City Communications Systems.** The permittee shall not permit the wireless facility authorized under this permit to interfere with any City communication systems. In the event that the wireless facility authorized under this permit is causing interference with any City communication systems, the Director may order the facility to be shut down and powered off until such time as the immediate interference has been mitigated, after a good faith effort is made to notify the permittee, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.
16. **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The

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permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

17. **Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may order the facility to be shut down and powered off until such time as the immediate threat has been mitigated, after a good faith effort is made to notify the permittee, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.
  
18. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility has not operated for any continuous six-month period and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation this code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a wireless facility is abandoned or deemed abandoned, which the Director may grant if the permittee, property owner or structure owner presents evidence of good cause for the extension. If neither the permittee, the property owner nor the structure owner complies with the removal and restoration obligations under this condition within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
  
19. **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following:
  - a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
  
  - b. the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment

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owner and site manager as may be necessary for the facility's continued operation;

- c. the facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
- d. a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week.

The City may develop a form in connection with such disclosures and, if so, the permittee shall be required to use such form. Within 10 business days after a written request by the City, the permittee shall furnish the City with an updated form that includes all the most-current information described in this condition. Any notices from the City to the permittee shall be deemed given when delivered to the most current address(es) for the permittee on file with the City.

20. **Indemnification.** The permittee and, if applicable, owners (other than the City) of the property and the structure upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and the City's boards, board members, commissions, commissioners, agents, officers, officials, employees and volunteers (collectively, the "**City Indemnitees**") from any and all (a) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or any City Indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (b) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. If the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the owners of the property and the structure (if applicable) and shall reasonably cooperate in the defense. The permittee, property owner and structure owner expressly acknowledge and agree that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee, property owner and/or structure owner shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee, property owner and structure owner expressly acknowledge and agree that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.



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21. **Insurance.** The permittee shall obtain and maintain insurance policies as follows:
- a. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
  - b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers’ Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - d. **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee’s profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. “Covered Professional Services” as designed in the policy must specifically include work performed under this permit.

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- e. **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- f. **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. Permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- g. **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- h. **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies
- i. **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days’ prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or

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suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.

- j. **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
  - k. **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
22. **Removal Bond.** Before the building official issues any permits required to commence construction, installation or other work in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the City Attorney in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for at least 10 years or the term of this permit (whichever is greater). In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable Laws. The bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increased costs.
23. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents,

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papers and other correspondence entered into the public record in connection with the permit (collectively, “**Records**”). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the City’s regular files will control over any conflicts between such City-controlled copies or Records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation on the City to create or prepare any Records not otherwise required to be created or prepared by other applicable Laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.

24. **Permit Revocation.** Any permit granted under **Chapter 17.45** or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in code **Section 17.66.050**.
  
25. **Truthful and Accurate Statements.** The permittee acknowledges that the City’s approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee’s behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee’s behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
  
26. **Successors and Assigns.** The conditions terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
  
27. **Severable Conditions.** If any provision in these conditions or such provision’s application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (b) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (c) all other provisions in this permit or their application to any person, entity or

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circumstance will be valid and enforceable to the fullest extent permitted by law.

- B. Modified Conditions.** The Director may modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection A to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with this code, generally applicable health and safety requirements and/or any other applicable Laws.

**17.45.110 Amortization**

Any nonconforming wireless facilities in existence at the time this chapter becomes effective must be brought into conformance with this chapter in accordance with the amortization schedule in this section. As used in this section, the “fair market value” will be the construction costs listed on the building permit or application for the subject wireless facility and the “minimum years” allowed will be measured from the date on which this chapter becomes effective.

<b>Fair Market Value on Effective Date</b>	<b>Minimum Years Allowed</b>
less than \$50,000.....	5
\$50,000 to \$500,000.....	10
greater than \$500,000.....	15

The Director may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Director may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than 10 years for any permit granted on or after January 1, 2012. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1, 2012, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the City granted such permit. Nothing in this section is intended or may be applied to prohibit any eligible facilities request pursuant to Chapter 17.47 on the basis that the subject wireless facility is a legal nonconforming wireless facility.

**17.45.120 Special Exceptions for Federal or State Preemption**

- A. **Preface.** The provisions in this section establish a procedure by which the City may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in **Section 17.45.120.B** in addition to the findings required under **Section 17.45.070.A**. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- B. **Required Findings.** The approval authority shall not grant any limited exception pursuant to this chapter unless the approval authority finds all the following:
1. the applicant has provided the approval authority with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
  2. the applicant has provided the approval authority with a detailed written statement that explains why: (A) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or (B) a provision in this chapter, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law;
  3. the applicant has provided the approval authority with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this chapter, the code, the general plan and/or any specific plan;
  4. the applicant has provided the approval authority with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
  5. the applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area;

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6. the exception requested by the applicant does not compromise or excuse compliance with any fire safety or other public safety standard; and
  7. the exception is narrowly tailored such that any deviation from this chapter is only to extent necessary for compliance with federal or state law.
- C. **Evidentiary Standard.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant’s request for an exception.
- D. **Expert Review.** Independent expert and/or consultant review will generally be appropriate when considering an exception request, which shall be at the applicant’s cost in the same manner as described in Section 17.45.050.H.
- E. **Legal Review.** Any exception request shall require the consultation of the City Attorney as to the validity and legal justification for the exception.

**17.45.130 Emergency Generators under Government Code Section 65850.75**

- A. **Preface.** This **Section 17.45.130** implements California Government Code Section 65850.75 until it is repealed by its own terms on January 1, 2024..
- B. **Definitions.** As used in this **Section 17.45.130**, the terms below are defined as follows:
1. **“emergency standby generator”** means the same as defined in California Government Code Section 65850.75(a)(1), which defines the term as “a stationary generator used for the generation of electricity that meets the criteria set forth in paragraph (29) of subdivision (a) of Section 93115.4 of Title 17 of the California Code of Regulations.”
  2. **“macro cell tower site”** means same as defined in California Government Code Section 65850.75(a)(3), which defines the term as “the place where wireless telecommunications equipment and network components, including towers, transmitters, base stations, and emergency powers necessary for providing wide area outdoor service, are located. A macro cell tower site does not include rooftop, small cell, or outdoor and indoor distributed antenna system sites.
- C. **Applicability.** This **Section 17.45.130** applies to all applications for authorization to install an emergency standby generator for a macro cell tower site within the City’s territorial or jurisdictional limits submitted for approval pursuant to California Government Code Section 65850.75.

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D. **Automatic Repeal.** Consistent with California Government Code Section 65850.75(h), the provisions in this **Section 17.45.130** shall be automatically repealed January 1, 2024, without any further action required by City Council.

E. **Required Approvals.**

1. **Administrative Design Review.** No person or entity may install an emergency standby generator for a macro cell tower site without an administrative design review approval issued by the Director pursuant to this **Section 17.45.130**. The purpose of the administrative design review approval is to confirm that a proposed emergency standby generator meets the criteria for mandatory approval under applicable state regulations. Each administrative design review approval issued pursuant to this **Section 17.45.130** shall be deemed to be an amendment to the underlying permit that authorizes the existing macro cell tower site to be modified.
2. **Other Permits and Approvals.** In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, regional or local government agencies, which includes without limitation other any permits and/or approvals required by this code.

F. **Applications.**

4. **Application Required.** The Director shall not approve any requests for authorization to install any emergency standby generators except upon a complete and duly filed application consistent with this section and any other written rules or requirements the City or the Director may establish from time to time in any publicly-stated format.
5. **Application Content.** All applications for a permit must include: (a) factual and verifiable evidence that the proposed project meets the criteria for approval as a permitted use under California Government Code Section 65850.75; (b) factual and verifiable evidence that the proposed project will be in compliance with all applicable health and safety laws, regulations or other rules; (c) the application fee for administrative design review approval as established by City Council resolution; and (d) all other the information and materials required by the Director for a complete application.

G. **Approvals, Denials and Appeals.**

1. **Administrative Review.** The Director shall administratively review a complete and duly filed application for an administrative design review approval and may act on such application without prior notice or a public hearing.



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2. **Required Findings for Approval.** The Director may approve or conditionally approve an application for an administrative design review approval when the Director finds that the proposed project:
  - a. involves installation of an emergency standby generator for a macro cell tower site where such macro cell tower site is an existing site that was previously permitted by the City; and
  - b. the emergency standby generator:
    - i. is located not more than 100 feet from the physical structure of the macro cell tower or base station;
    - ii. is mounted on a concrete pad;
    - iii. is rated below 50 horsepower;
    - iv. has a double-wall storage tank that does not exceed 300 gallons; and
    - v. has physical dimensions no more than 250 cubic feet in volume, including the storage tank; and
    - vi. complies with all applicable state and local laws and regulations, including but not limited to ambient noise limit, air quality regulations and building and fire safety codes.
3. **Criteria for Denial.** Notwithstanding any other provision in this [Section 17.45.130](#), and consistent with all applicable laws and regulations, the Director may deny without prejudice any application for an administrative design review approval when the Director finds that the proposed project:
  - a. does not meet the findings required in [Section 17.45.130.G.2](#); or
  - b. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
4. **Decision Notices.** Within five days after the Director acts on an application for an administrative design review approval, the Director shall send a written notice to the applicant. If the Director denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal if the applicant so chooses.
5. **Appeals.** Any applicant may appeal the Director's written decision to deny without prejudice an application for an administrative design review approval. The written appeal together with any applicable appeal fee must be tendered

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to the City within 10 calendar days from the Director's written decision and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Administrator shall be the appellate authority for all appeals from the Director's written decision to deny without prejudice an application for an administrative design review approval. The City Administrator shall review the application de novo without notice or a public hearing; provided, however, that the City Administrator's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this policy and any other applicable laws. The City Administrator shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals. No persons or entities other than the applicant may initiate the appeal process described in this section; however, nothing in this section or this chapter intended to prevent or discourage an interested persons or entities from providing the City with information that may be used to initiate permit revocation proceedings.

- H. **Standard Conditions of Approval.** All administrative design review approvals issued pursuant to this [Section 17.45.130](#), whether approved by the Director or deemed granted by the operation of law, shall be automatically subject to the conditions stated in [Section 17.45.100.A.5 through Section 17.45.100.A.27](#). The Director (or the City Administrator as the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety and comply with applicable laws.

#### **17.45.140 Violations**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in [Chapter 18.04](#) of this code, summary abatement pursuant to [Chapter 15.57](#) of this code, California Code of Civil Procedure § 731, or any other remedy available to the City.