

CHAPTER 17.47

CHANGES TO WIRELESS FACILITIES UNDER SECTION 6409 OF THE SPECTRUM ACT

17.47.010 Purpose and Intent

- A. The City of Carmel-by-the-Sea intends this chapter to establish reasonable, standards and procedures for reviewing and acting on eligible facilities requests proposed within the City's territorial and jurisdictional boundaries, consistent with and to the extent permitted under Section 6409 of the Spectrum Act, FCC regulations and other applicable law.

17.47.020 Definitions

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or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.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. **"approval authority"** means the City official responsible for reviewing applications for EFR administrative design review approvals and vested with the authority to approve, conditionally approve or deny such applications as provided in this chapter. The approval authority for an EFR administrative design review approval in connection with either private property or the public rights-of-way shall be the Director, or on appeal, the City Administrator.
- B. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended or superseded, which defines that term as follows:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower.

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(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

- C. **“City Administrator”** means City of Carmel-by-the-Sea City Administrator or the City Administrator’s designee.
- D. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.
- E. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended or superseded, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.
- F. **“eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

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- G. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”
- H. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded, which provides that “[a] constructed tower or base station is existing for purposes of the FCC’s Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”
- I. **“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.
- J. **“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.
- K. **“RF”** means “radio frequency” or electromagnetic waves.
- L. **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.
- M. **“shot clock”** means the time defined by the FCC in which a state or local government must act on an eligible facilities request.
- N. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended or superseded, which provides that “[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local

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government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.”

- O. **“substantial change” or “substantially change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended or superseded, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
1. For towers outside the public rights-of-way, a substantial change occurs when:
 - a. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or
 - b. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - a. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - b. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - c. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%)

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larger in height or volume than any existing ground-mounted equipment cabinets; or

- e. the proposed collocation or modification involves excavation or deployment outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. In addition, for all towers and base stations wherever located, a substantial change occurs when:
- a. the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
 - b. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

- P. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded, which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.
- Q. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded, which defines that term as “[e]quipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The

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term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.”

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

17.47.030 Applicability

This chapter applies to all requests for authorization to collocate, replace or remove transmission equipment at an existing wireless tower or base station, within the City’s territorial or jurisdictional limits, whether on private property or in the public rights-of-way, submitted for approval pursuant to Section 6409.

17.47.040 Required Permits and Other Approvals

- A. **EFR Administrative Design Review Approval.** No person or entity may collocate, replace or remove transmission equipment at or in connection with an existing wireless tower or base station without an “EFR administrative design review approval” issued by the approval authority pursuant to this chapter. The purpose of an EFR administrative design review approval is to determine if a proposed collocation or other modification meets the criteria for mandatory approval under applicable federal regulations. Each EFR administrative design review approval shall be deemed to be an amendment to the underlying permit that authorizes the existing wireless tower or base station to be modified.
- B. **Other Permits and Regulatory Approvals.** In addition to an EFR administrative design review approval required under this chapter, no person or entity may collocate, replace or remove transmission equipment at or in connection with an existing wireless tower or base station without first obtaining all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial health and safety permits and/or regulatory approvals issued by other departments or divisions within the City such as encroachment permits for work or facilities in the public right-of-way. All applications for ministerial permits submitted in connection with a proposed EFR administrative design review approval must contain a valid EFR administrative design review approval issued by the City for the proposed wireless facility. Any application for any ministerial permit(s) submitted without such EFR administrative design review approval may be denied without prejudice. Furthermore, any EFR administrative design review approval granted under this chapter or deemed granted by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

17.47.050 Permit Applications

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- A. **Application Required.** The approval authority shall not approve any eligible facilities requests 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.
- 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

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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 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 for a public hearing under [Section 17.52.110](#), 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.**

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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; and (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. 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.
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 17.47.050.G](#). 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 17.47.050.G](#) shall be applicable to independent consultant review required by the Fire Safety Authority

17.47.060 Notice, Decisions and Appeals

- A. **Initial Notice and Administrative Review.** Within 10 days after an application is duly filed with the department, the Director shall post notice about the application on the City's website. The approval authority shall review a complete and duly filed application for an EFR administrative design review approval and may act on such application without prior notice or a public hearing.
- B. **Required Findings for Approval.** The approval authority may approve or conditionally approve an application for an EFR administrative design review approval when the approval authority finds that the proposed project:
1. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 2. does not substantially change the physical dimensions of the existing wireless tower or base station.
- C. **Criteria for Denial.** Notwithstanding any other provision in this chapter, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for an EFR administrative design review approval when the approval authority finds that the proposed project:
1. does not meet the findings required in [Section 17.47.060.B](#);
 2. involves the replacement of the entire support structure; or
 3. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- D. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the approval authority's authority to conditionally approve an application for an EFR administrative design review approval to protect and promote the public health and safety.
- E. **Decision Notices.** Within five days after the approval authority acts on an application for an EFR administrative design review approval, the approval authority shall send a written notice to the applicant. If the approval authority 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.
- F. **Appeals.** Any applicant may appeal the approval authority's written decision to deny without prejudice an application for EFR administrative design review approval. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within 15 days from the approval authority's written

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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 approval authority's written decision to deny without prejudice an application for EFR 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 chapter 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.

17.47.070 Standard Conditions for Approved Permits

- A. Except as may be authorized in Section 17.47.070.B, all EFR administrative design review approvals approved under this chapter or deemed granted by operation of law shall be automatically subject to the following conditions:
1. **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR administrative design review approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization in connection with the wireless tower or base station to be modified. Accordingly, the term for this EFR administrative design review approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof.
 2. **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any eligible facilities request(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facilities requests or the approval authority grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the

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approval authority may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated eligible facilities request when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.

3. **City's Standing Reserved.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any eligible facilities request.
4. **CPUC GO-159A Certification.** Within 15 business days after the City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval, 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. **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.
6. **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

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the permittee may resubmit a complete application, which includes without limitation all application fees, for the same or a substantially similar project.

7. **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 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.
8. **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.
9. **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.
10. **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

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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.

11. **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 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.
12. **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

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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 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.

13. **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."
14. **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.

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15. **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 permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
16. **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.
17. **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.
18. **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:

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- a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (a) the permittee and, if different from the permittee, the (b) property owner, (c) structure owner, (d) site operator, (e) equipment owner, (f) site manager and (g) 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 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.

19. **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

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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.

20. **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 (a) contractual liability; (b) cross liability exclusion for claims or suits by one insured against another; (c) products/completed operations liability; or (d) 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.

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- 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.
- 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

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- 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 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.
21. **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

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may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increased costs.

22. **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, 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.
23. **Permit Revocation.** Any permit granted under **Chapter 17.47** or deemed granted by the operation of law may be revoked in accordance with the provisions and procedures in code **Section 17.66.050**.
24. **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.
25. **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.
26. **Severable Conditions.** If any provision in these conditions or such provision’s application to any person, entity or circumstances is or held by any

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court with competent jurisdiction to be invalid or unenforceable: (1) 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 (2) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.

- B. The approval authority (or the appellate authority) may modify, add or remove conditions to any permit on a case-by-case basis as the approval authority (or the appellate authority) 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 to allow for proper operation of the approved facility consistent with the goals of this chapter; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this code, generally applicable health and safety requirements and/or any other applicable Laws.

17.47.080 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.