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ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO,
CALIFORNIA, ADDING CHAPTER 11.20 OF THE RIALTO MUNICIPAL
CODE RELATING TO WIRELESS TELECOMMUNICATIONS
FACILITIES WITHIN THE RIGHT-OF-WAY**

WHEREAS, the City Council may make and enforce within its limits all local, police,
sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, significant changes in Federal and State law that affect local authority over
wireless communications facilities ("WCFs") have occurred, including but not limited to the
following:

- i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a
declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable
timeframes for State and local governments to act on applications for WCFs;
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief
and Job Creation Act ("Section 6409(a)"), which mandated that State and local governments
approve certain modifications and collocations to existing WCFs, known as eligible facilities
requests;
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things,
implemented new limitations on how State and local governments review applications
covered by Section 6409(a), established an automatic approval for such applications when
the local reviewing authority fails to act within 60 days, and also further restricted generally
applicable procedural rules under the 2009 Shot Clock;
- iv. On October 9, 2015, the State of California adopted Assembly Bill No. 57 (Quirk), which
deemed approved any WCF applications when the local reviewing authority fails to act
within the 2009 Shot Clock timeframes;

1 v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express
2 and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. §
3 253(a);

4 vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that,
5 among other things, creates a new regulatory classification for small wireless facilities
6 (“SWFs”), requires State and local governments to process applications for small wireless
7 facilities within 60 days or 90 days, establishes a national standard for an effective
8 prohibition and provides that a failure to act within the applicable timeframe presumptively
9 constitutes an effective prohibition; and

10 **WHEREAS**, in addition to the changes described above, new Federal laws and regulations
11 that drastically alter local authority over WCFs are currently pending, including without limitation,
12 the following:

13 i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-
14 79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above,
15 but may adopt forthcoming rulings and/or orders that further limit local authority over
16 wireless facilities deployment;

17 ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate
18 Committee on Commerce, Science and Transportation the "STREAMLINE Small Cell
19 Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell
20 WCFs and require local governments to review applications based on objective standards,
21 shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009
22 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the
23 applicable 2009 Shot Clock;

24 **WHEREAS**, given the rapid and significant changes in Federal and State law, the actual
25 and effective prohibition on moratoria to amend local policies in response to such changes and the
26 significant adverse consequences for noncompliance with Federal and State law, the City Council
27 desires to add Chapter 11.20 of the Rialto Municipal Code, entitled “WIRELESS
28 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” (the

1 “Ordinance”), in its entirety, to allow greater flexibility and responsiveness to the new Federal and
2 State laws while still preserving the City's traditional authority to the maximum extent practicable;
3 and

4 **WHEREAS,** On April 9, 2019 the City Council held a duly noticed public hearing on the
5 Ordinance, reviewed and considered the staff report, other written reports, public testimony and
6 other information contained in the record.

7 **NOW, THEREFORE,** the City Council of the City of Rialto hereby ordains as follows:

8 **SECTION 1.** The facts set forth in the recitals in this Ordinance are true and correct and
9 incorporated by reference. The recitals constitute findings in this matter and, together with the staff
10 report, other written reports, public testimony and other information contained in the record, are an
11 adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

12 **SECTION 2.** The Ordinance is consistent with the City’s General Plan, Rialto Municipal
13 Code, Rialto Zoning Code and applicable Federal and State law

14 **SECTION 3.** The Ordinance will not be detrimental to the public interest, health, safety,
15 convenience or welfare.

16 **SECTION 4.** The Ordinance is not a project within the meaning of Section 15378 of the
17 State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential
18 for resulting in physical change in the environment, directly or indirectly. The Ordinance does not
19 authorize any specific development or installation on any specific piece of property within the City’s
20 boundaries. The Ordinance is further exempt from CEQA because the City Council’s adoption of
21 the Ordinance is covered by the general rule that CEQA applies only to projects which have the
22 potential for causing a significant effect on the environment (State CEQA Guidelines, §
23 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either
24 State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines
25 Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines
26 Section 15304 (minor alterations to land).

27 **SECTION 5.** The Ordinance is hereby added as Chapter 11.20, “WIRELESS
28 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 11 of the

Rialto Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated herein by this reference.

SECTION 6. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this Ordinance, the provisions in this Ordinance will control.

SECTION 7. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

SECTION 8. The City Clerk shall cause this Ordinance to be printed and posted once, within fifteen (15) calendar days after its passage, at three (3) public locations in the City, and shall cause a copy of this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the City.

PASSED, APPROVED AND ADOPTED this ____th day of _____, 2019.

DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM

FRED GALANTE, City Attorney

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Exhibit “A”
Chapter 11.20 entitled
“WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

Chapter 11.20 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

11.20.010 - PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way ("ROW") in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission ("FCC") and California Public Utilities Commission ("CPUC"), and (4) to ensure that the use and enjoyment of the ROW is not inconvenienced by the use of the ROW for the placement of wireless facilities. The city recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the city, and the city also recognizes its obligation to comply with applicable Federal and State laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules and regulations and this chapter, the laws, rules and regulations shall control.

11.20.020 - DEFINITIONS.

"Accessory equipment" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, and surface location markers.

"Antenna" means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. "Antenna" is specific to the antenna portion of a wireless telecommunications facility.

"Antenna array" shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support.

"Base station" shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). "Base station" does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. 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.
2. 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 cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the city under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition 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 that support.

“Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“City” means the City of Rialto.

“City engineer” means the City’s City Engineer, or his or her designee.

“Code” means the Rialto Municipal Code.

“Collocation” bears the following meanings:

1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, 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.”
2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d).)

“COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

“Development services director” means the director of community development and planning, or his or her designee.

“Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.

“Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment;
3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

“Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

“Eligible support structure” means any support structure located in the ROW that is existing at the time the relevant application is filed with the city under this chapter.

“Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment 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 chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

“Facility(ies)” means wireless telecommunications facility(ies).

“FCC” means the Federal Communications Commission.

“Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.

“Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.

“Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the ROW.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation.

“Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

“Mounted” means attached or supported.

“OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.

“Permittee” means any person or entity granted a WTFP pursuant to this chapter.

“Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

“Public right-of-way” or “ROW” means a strip of land, streets, curbs, gutters, sidewalks, roadway medians, and parking strips, acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The ROW does not include lands owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods.

“Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.

2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

“RF” means radio frequency.

“Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

“Small cell network” means a network of small cells.

“Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).

“Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the city engineer and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the city engineer may allow for a ground mounted cabinet. A modification or collocation results in a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site. Excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
5. It defeats the concealment or stealthing elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a

manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.

7. For all proposed collocations and modifications, a substantial change occurs when:
 - a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - a. The proposed collocation or modification would defeat the concealment elements of the support structure; 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 that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the ROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

“Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

“SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facility:
 - a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - c. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - d. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

“SWF Regulations” means those regulations adopted by the city council implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.

“Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities. This definition does not include utility poles.

“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

“Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

“WTFP” means a “wireless telecommunications facility permit” required by this chapter, which may be categorized as either a Major WTFP or an Administrative WTFP.

11.20.030 - APPLICABILITY.

A. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.

B. This chapter does not apply to the following:

1. Amateur radio facilities;
2. OTARD antennas;
3. Facilities owned and operated by the city for its use or for public safety purposes;
4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect.
5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the city engineer, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

C. Public use. Except as otherwise provided by state or federal law, any use of the ROW authorized pursuant to this chapter will be subordinate to the city's use and use by the public.

11.20.040 - WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

A. Administration. Unless a matter is referred to the development services director as provided below, the city engineer is responsible for administering this chapter. As part of the administration of this chapter, the city engineer may:

1. Interpret the provisions of this chapter;
2. Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
3. Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the ROW, taking into account the zoning districts bounding the ROW; and
4. Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

- B. Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).
1. An Administrative WTFP, subject to the city engineer’s approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure for a proposal that is determined to be for a SWF, an eligible facilities request, or both.
 2. In the event that the city engineer determines that any application submitted for an Administrative WTFP does not meet the administrative permit criteria of this chapter, the city engineer shall convert the application to a Major WTFP and refer it to the development services director for planning commission hearing.
 3. Except in the case of an eligible facilities request, the city engineer may refer, in his/her discretion, any application for an Administrative WTFP to the development services director, who shall have discretion to further refer the application to planning commission for hearing or relegate it back to the city engineer for processing.
- C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are *not* qualified for an Administrative WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.
- D. Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as specified in the SWF Regulations, which is adopted and may be amended by city council resolution. All SWFs, shall comply with the SWF Regulations, as they may be amended from time to time. The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies.
- F. Eligible Applicants. Only applicants who have been granted the right to enter the ROW pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the ROW, shall be eligible for a WTFP pursuant to this chapter.

11.20.050 - APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- A. Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding an WTFP, in

accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.

1. All applications for WTFPs shall be initially submitted on a form prepared by the city engineer and published on the city's website.
2. All applications must be submitted to the city engineer at a pre-scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.
3. If the wireless telecommunications facility will also require the installation of fiber, cable or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the ROW. Standalone applications for the installation of fiber, cable or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.

B. Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the city engineer, but at a minimum shall include the following:

1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.
2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.
3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, proposed excavations, detailed site plans and dimensioned drawings, and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo simulations must be provided.
4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the code and the FCC's radio frequency emissions standards.
5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF and must contain all additional application information, if any, required by the SWF Regulations.

7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site.
 8. The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties within 300 feet of the project location. Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.
 9. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the City from complying with any deadline for action on an application.
- C. Application Contents—Major WTFPs. The application form for a Major WTFP shall require the following information, in addition to all other information determined necessary by the city engineer:
1. The name, address and telephone number of the applicant, owner and the operator of the proposed wireless telecommunication facility.
 2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.
 3. A full written description of the proposed wireless telecommunications facility and its purpose.
 4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:
 - a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications.
 - b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.

- c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).
 - d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the support structure as required by the city.
5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
 6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include a meaningful comparative analysis of why the proposed location and design is the least noncompliant or intrusive location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law). Said study shall include all eligible support structures and/or alternative sites evaluated for the proposed WTFP. The alternative site analysis must include the consideration of at least two eligible support structures, or, if none, why no eligible support facilities are reasonably available or technically feasible.
 7. Site plan(s) to scale, specifying and depicting the exact proposed location of the proposed wireless telecommunications facility, accessory equipment, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.
 8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, the National Environmental Policy Act, or related environmental laws).
 9. An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.
 10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
 11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and

certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
 13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code.
 14. A traffic control plan when the proposed installation is on any street in a non-residential zone or when the applicant seeks to use large equipment (e.g. crane).
 15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation.
 16. Certification that applicant is a telephone corporation or a statement for its claimed right to enter the right-of-way, and a copy of a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, if any.
 17. Evidence that the proposed wireless facility qualifies as a “personal wireless services facility” as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii).
 18. Address labels for use by the city in noticing all property owners within 300 feet of the proposed wireless telecommunication facility, and
 19. Any other information and/or studies reasonably determined to be necessary by the city engineer or development services director may be required.
- D. Fees and Deposits Submitted with Application(s). For all WTFPs, application fee(s) shall be required to be submitted with any application, as established by city council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- E. Costs. Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City.

- F. **Effect of State or Federal Law on Application Process.** In the event a state or federal law prohibits the collection of any information or application conditions required by this Section, the city engineer is authorized to omit, modify or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the city engineer or his or her designee. The city engineer may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this Subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- G. **Applications Deemed Withdrawn.** Any application will be automatically deemed withdrawn when the applicant fails to tender a substantive response to the city on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The city engineer or development services director (as applicable) may, in his/her discretion, grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the 90th day that shows good cause.
- H. **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.
- I. **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the city engineer by notifying the applicant in writing and specifying the material omitted from the application.

11.20.060 - REVIEW PROCEDURE.

- A. **Collocation Encouraged.** Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- B. **Findings Required for Approval.**
 - 1. **Administrative WTFP Applications for SWFs.** For WTFP applications proposing a SWF, the city engineer or development services director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. The facility qualifies as a SWF; and

- b. The facility meets all standards, requirements and further findings as may be specified in the SWF Regulations; and
 - c. The facility is not detrimental to the public health, safety, and welfare; and
 - d. The facility meets applicable requirements and standards of State and Federal law.
- 2. Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the city engineer shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. The application qualifies as an eligible facilities request; and
 - b. The proposed facility will comply with all generally-applicable laws.
- 3. Major WTFP Applications. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:
 - a. If applicable, all notices required for the proposed WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility.
 - b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter.
 - c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure.
 - d. The applicant has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
 - e. The proposed installation is designed to be the least intrusive means possible (i.e. all alternative locations and designs were technically infeasible or not reasonably available).
- C. Notice; Decisions. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.
 - 1. Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.
 - 2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Government Code Section 65091. Public notices shall include color photo simulations from three different angles depicting the wireless telecommunication facility as

proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least thirty (30) days prior to the date of approval; such posted simulations shall remain in-place until final decision on the application is reached.

3. **Written Decision Required for All WTFP Determinations.** Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively-processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the city engineer or development services director, as applicable, shall provide written notice including the following:
 - a. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
 - b. A general description of the property involved;
 - c. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
 - d. To be given by first class mail to:
 - (i) The project applicant and property owner,
 - (ii) Any person who submitted written comments concerning the WTFP,
 - (iii) Any person who has filed a written request with the city to receive such notice, and
 - (iv) Any homeowner association on file with the city that has jurisdiction over the WTFP site.
4. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

D. Appeals.

1. **Administrative WTFP Appeals.** Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the City Administrator. The hearing officer may decide the issues de novo and whose written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.

- a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All appeals must be filed within two (2) business days of the written administrative decision, unless the city engineer extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.
- 2. Appeals on Major WTFPs shall proceed as provided in accordance with the appeal provisions in Chapter 18.68 (Appeals) of the code. The appellate authority may hear the appeal de novo.
- E. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the expiration.

11.20.070 – DESIGN AND DEVELOPMENT STANDARDS.

- A. SWF Design and Development Standards. SWFs are subject to those design and development standards and conditions of approval set forth in the SWF Regulations. The city's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.
- B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 11.20.060 have been made are subject to the following conditions, unless modified by the approving authority:
 - 1. WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.
 - 2. No permit term extension. The city's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
- C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the ROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the standards developed by the city engineer and development services director.

11.20.080 -LOCATION RESTRICTIONS; EXCEPTIONS FOR NON-COMPLIANT MAJOR WIRELESS TELECOMMUNICATIONS FACILITIES.

- A. Locations Requiring an Exception. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to Subsection B hereof:
1. Public right-of-way within those zones as identified in the general plan as residential zones;
 2. Public right-of-way within those zones as identified in the general plan as historic districts, or within 100 feet of designated historic buildings; and
 3. Public right-of-way adjacent to schools, public parks, or churches other houses of worship.
- B. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an "exception" under this chapter, no such exception shall be granted unless the applicant demonstrates with clear and convincing evidence all the following:
1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii);
 2. The applicant has provided the city with a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent wireless telecommunications facilities without the proposed facility, predicted service coverage levels from all adjacent facilities serving applicant with the proposed facility, and predicted service coverage levels from the proposed facility without all adjacent facilities.
 - b. In the event the applicant seeks to address service capacity concerns, a written explanation and propagation maps identifying the existing facilities with

service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

3. The applicant has provided the city with a meaningful comparative analysis of why any alternative location(s) or design(s) are not technically feasible or reasonably available; and the factual reasons why the proposed location and design is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
 4. The applicant has demonstrated that strict compliance with any provision in this chapter for a Major WTFP would effectively prohibit the provision of personal wireless services.
- C. Scope. The planning commission or city engineer, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or city engineer, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

11.20.090 - OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

- A. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules. The permittee shall ensure that all equipment and other improvements related to the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.
- B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours after receipt of notice from the city or discovery of the need by the permittee, owner, operator or any designated maintenance agent.
- C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the city engineer of to the cancellation or material modification of any applicable insurance policy.
- D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and

other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or Permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course

- E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the city engineer in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the ROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the ROW.
- G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the city engineer with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.
- H. All facilities and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or above or underground utility lines and systems that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW.
 - 2. General dirt and grease;

3. Chipped, faded, peeling, and cracked paint;
 4. Rust and corrosion;
 5. Cracks, dents, and discoloration;
 6. Missing, discolored or damaged artificial foliage or other camouflage;
 7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City.
 8. Broken and misshapen structural parts; and
 9. Any damage from any cause.
- I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping.
 - J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - K. Each facility shall be operated and maintained to comply at all conditions of approval. The city shall give the permittee thirty (30) days to correct any identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.
 - L. All facilities permitted pursuant to this chapter shall comply with the American with Disabilities Act.
 - M. The permittee is responsible for obtaining power to the facility and for the cost of electrical usage.
 - N. Failure to comply with the city's adopted noise standard after written notice and reasonable opportunity to cure have been given shall be grounds for the city to revoke the permit.
 - O. Interference.
 1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the city shall be moved, unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation. Prior to commencement of any work, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any

other structure, improvement, or property within the ROW or city utility easement to be affected by permittee's facilities.

2. The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
 - a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period, the permittee shall cease operation of any facility causing such interference until such interference is cured.
 - b. Physical Interference. The city shall give the permittee thirty (30) days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.
 3. The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
- P. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- Q. Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations, all conditions associated with this approval and any ministerial permits issued in connection with this approval. In the event that the permittee does not maintain such records or fails to produce true and complete copies of such records within a reasonable time, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
- R. Attorney's Fees. In the event the city determines that it is necessary to take legal action, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the proceeding.

11.20.100 - NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

11.20.110 - NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

- A. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.
- B. No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the city has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.
- C. The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

11.20.120 - PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary

post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced.

- D. Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the city engineer notice that operations have commenced by the same date.

11.20.130 - CESSATION OF USE OR ABANDONMENT.

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the city engineer in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the city engineer of any discontinuation of operations of 30 days or more.
- C. Failure to inform the city engineer of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for: litigation; revocation or modification of the permit; acting on any bond or other assurance required by this article or conditions of approval of the permit; removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or any other remedies permitted under this code or by law.

11.20.140 - REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the city engineer where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for prosecution; acting on any security instrument required by this chapter or conditions of approval of permit; removal of the facilities by the city in accordance

with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or any other remedies permitted under this code or by law.

- C. **Summary Removal.** In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- D. **Removal of Facilities by City.** In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

11.20.150 - EFFECT ON OTHER ORDINANCES.

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

11.20.160 - STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the ROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

11.20.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

- B. Legal nonconforming wireless telecommunications facilities shall, within ten years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the city can require such compliance under federal and state law.
- C. An aggrieved person may file an appeal to the city council of any decision of the city engineer or other deciding body made pursuant to this Section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.