



**DISCUSSION ITEMS**

**Agenda Item # 4**

**AGENDA REPORT SUMMARY**

**Meeting Date:** July 30, 2019

**Subject:** Urgency Ordinance No. 2019-460: Wireless Facilities in Public Rights-of-Way

**Prepared by:** Gail Karish, City Attorney's Office

**Attachments:**

- 1) Ordinance 2019-460
- 2) Resolution 2019-35
- 3) Resolution 2019-36
- 4) July 24, 2019 Police Department Memorandum: Public Safety Communications

**Initiated by:**

City Staff/City Council

**Previous Council Consideration:**

July 9, 2019

**Fiscal Impact:**

None

**Environmental Review:**

Exempt. The Ordinance and Resolutions are not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because they have no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application is filed that CEQA would be implicated. Further, even if they were interpreted to permit a "project," any applicable wireless facility installation would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land.)

**Policy Question(s) for Council Consideration:**

- Does the City Council wish to Adopt an urgency ordinance related to the application process and design standards associated with the deployment of small cell nodes in the City's public rights-of way?

**Summary:**

- City Council received a briefing on July 9, 2019, discussing small cell nodes and how local agencies can and can not regulate deployment of them

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**Reviewed By:**

City Manager

CJ

City Attorney

CD

Finance Director

SE

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- The Council provided direction to staff and the City Attorney requesting an urgency ordinance be prepared and placed on the Council's July 30, 2019 Special meeting agenda
- Approval of an urgency ordinance requires approval by a minimum of 2/3rds of the members of the City Council

**Staff Recommendation:**

- 1) Move to adopt urgency Ordinance No. 2019-460 to amend the Los Altos Municipal Code to add Chapter 11.14, "Wireless Facilities in Public Rights-of-Way" and to revise Chapter 11.12, "Personal Wireless Services and Facilities"
- 2) Move to approve Resolution No. 2019-35 establishing Design Guidelines and Standards for Wireless Facilities in Public Rights-of-Way
- 3) Move to approve Resolution No. 2019-36 establishing a Fee Schedule for Wireless Facilities in Public Rights-of-Way



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### **Purpose**

The Council is asked to consider and adopt an urgency ordinance (“Ordinance”), as well as accompanying resolutions to provide the regulatory framework, standards and fees for permitting the installation of wireless facilities within the City’s public rights-of-way (“ROW”).

### Need for Urgent Action

LAMC Chapter 11.12 regulates wireless facilities through zoning regulations and use permits, but exempts facilities regulated by the California Public Utilities Commission. Consistent with this exemption, the City currently processes requests to place small cell wireless facilities in the ROW through an encroachment permit application process pursuant to a policy document entitled “Distributed Antenna Systems for Wireless Communications; Encroachment Permit Requirements”. Since the policy document was developed the Federal Communications Commission (“FCC”) has adopted new rules which impose more stringent requirements on local governments, there has been an increase in industry interest in deploying small cell wireless facilities to address service needs within the City and elsewhere, and some members of the public have expressed concern about the existing process.

The City Council held a study session on July 9, 2019, at which time it heard a presentation from the City Attorney’s office and took public comment on the subject of small wireless facilities deployment within Los Altos. City Council directed City Staff to prepare an urgency ordinance for consideration at the July 30, 2019 meeting.

Staff recommends adopting this Ordinance on an urgency basis for a number of reasons. The new FCC regulations discussed in detail below are already in effect, and the City’s existing code and policy does not adequately address the particular considerations unique to placement of small wireless facilities in the ROW in a manner consistent with the FCC regulations. In addition, the City has already received some applications and anticipates submission of more in the immediate future. If not adequately regulated, the installation of small wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators, all of which may negatively impact the City and its citizens. Furthermore, without adequate procedures in place consistent with the new and updated FCC shot clocks, the City is at risk of potential litigation or other potential liability arising from the failure to process applications consistent with applicable law.



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### Scope of Local Authority to Regulate Placement of Wireless Facilities

Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. These deployments are subject to land use review under the zoning code.

In recent years, companies increasingly seek to install wireless facilities in the ROW on utility poles, streetlights and new poles. Current predictions indicate that the next wave of wireless facility deployment—5G—will involve \$275 billion in investment over the next decade, with the vast majority of these new facilities anticipated to be placed in ROW. Historically, telecommunications installations in the ROW are typically addressed through encroachment permits. However, the City’s existing Municipal Code addressing wireless facilities is not consistent with current law, and in particular contains no standards or regulations designed to address the unique aesthetic, safety, operational and locational issues in connection with the installation of wireless facilities in the ROW. While the overall ordinance likely requires an update, recent changes in law described below necessitate an immediate focus on addressing facilities in the ROW.<sup>1</sup>

Under state law, Pub. Util. Code Section 7901 allows telephone companies to place “poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines” in the public rights-of-way so long as such placements do not incommode the public use. Companies that obtain a CPUC-issued certificate of public convenience and necessity (CPCN), as well as wireless providers, may enjoy the benefits of Sec. 7901.<sup>2</sup> The California Supreme Court recently confirmed that “incommode” is broad enough to be inclusive of concerns related to the appearance of a facility, and therefore, Section 7901 allows local governments to regulate the deployments based on aesthetic concerns.<sup>3</sup> However, regulation that is too restrictive (for example, prohibiting wireless facilities from large parts of a city’s public rights of way, particularly when other telephone infrastructure is allowed aboveground) may give rise to a claim that the restriction is not driven by aesthetics and is so substantial that the franchise right to use the public right of way is effectively frustrated by local regulation.

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<sup>1</sup> The Ordinance discussed herein only addresses rights-of-way owned and managed by the City. Some roadways in Los Altos, whose rights-of-way are maintained by the state, are not within the City’s jurisdiction.

<sup>2</sup> e.g., *GTE Mobilnet of Cal. L.L.P. v. City & County of San Francisco*, 440 F. Supp. 2d 1097, 1103 (N.D. Cal. 2006) (Court finds wireless carriers are included in the definition of “telephone corporation” in § 7901, and that the definition of “telephone line” in § 7901 is broad enough to reach wireless equipment.); *Application of NextG Networks of California, Inc. (U6745C) for Authority to Engage in Ground-Disturbing Outside Plant Construction And Related Matter*, Decision 11-01-027; Application 09-03-007; Case 08-04-037, 2011 Cal. PUC LEXIS 25 (Cal. PUC 2011)(CPUC finds DAS providers and their equipment may obtain a CPCN).

<sup>3</sup> *T-Mobile West LLC v. City and County of San Francisco*, S238001, slip opinion (Cal. Sup. Ct, 2019).



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Federal law limits local authority to freely regulate the placement of wireless facilities. Under federal law, local regulations on placement “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”<sup>4</sup> Challenges to locational restrictions typically arise under an “effective prohibition” claim. Local governments are required to act on requests to place wireless facilities “within a reasonable period of time,”<sup>5</sup> must explain decisions to deny applications “in writing and supported by substantial evidence contained in a written record,”<sup>6</sup> and are prohibited from regulating placement, construction and modification of facilities “on the basis of the environmental effects of radio frequency emissions.”<sup>7</sup>

In implementing these laws, the FCC has imposed shot clocks governing particular types of applications, and federal courts have developed tests to determine whether a local government action violates one of these rules, or otherwise constitutes an “effective prohibition.” The Ninth Circuit, for example, developed a multi-prong test. One prong requires the applicant to demonstrate that it has a significant gap in its own service network (even if other companies provide service in an area).<sup>8</sup> If a court finds that a local requirement prevents a provider from closing a “significant gap” in its service, then the inquiry will turn to the second prong, that is, the provider “must show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve.”<sup>9</sup> The provider has the burden of establishing that there is a lack of available and technologically feasible alternatives to its proposed means of filling the gap, and the local jurisdiction may attempt to rebut the showing by proffering evidence of potentially available and feasible alternatives.<sup>10</sup>

#### New Federal Regulations Further Limit Local Authority

Recent changes in federal regulation that went into effect earlier this year have changed the effective prohibition standard developed by the Ninth Circuit, and imposed new shot clocks and other restrictions on local government actions. A FCC order and regulations<sup>11</sup> went into effect partly on January 14, 2019 and partly on April 15, 2019.

The FCC adopted new shorter shot clocks, or time periods for processing applications for small wireless facilities. Local governments now have only 60 days to process applications for collocation of wireless facilities on an existing structure and 90 days for new structures. In addition, the FCC

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<sup>4</sup> 47 U.S.C. § 332(c)(7)(B)(II).

<sup>5</sup> 47 U.S.C. § 332(c)(7)(B)(II)(ii).

<sup>6</sup> 47 U.S.C. § 332(c)(7)(B)(II)(iii).

<sup>7</sup> 47 U.S.C. § 332(c)(7)(B)(II)(iv).

<sup>8</sup> *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 732 (9th Cir. 2005).

<sup>9</sup> *Id.* at 734.

<sup>10</sup> *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, 998 (9th Cir. 2009).

<sup>11</sup> See *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, FCC 18-133, WT Docket 17-79, WC Docket 17-84 (rel. Sept. 27, 2018).



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adopted a standard that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>12</sup> The FCC also broadly declares: “...an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities...also by materially inhibiting the introduction of new services or the improvement of existing services.”<sup>13</sup> The intent of the new test is to make it easier for applicants to claim an effective prohibition.

Under the new rules, if a city does not render a decision on a small wireless facility application within the specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for action will be presumed to violate federal law (both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services).

The FCC also declared that all fees (including permit fees and rental fees for use of government-owned infrastructure, such as streetlights) must be based on a reasonable approximation of the local government’s costs, such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly situated competitors in similar situations. The FCC established of presumptively reasonable fee levels (called “safe harbors”) that include: non-recurring fees equal to \$500 for a single application for up to five collocations, plus \$100 for each additional collocation, and \$1,000 for each new pole. Recurring fees for attachment to municipal infrastructure are presumed reasonable if equal to \$270 per facility/per year, including the fee for attachment to municipal infrastructure and use of ROW.

Further, the FCC rules that went into effect on April 15, 2019 address aesthetics standards, including undergrounding and spacing. The FCC declared that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance so that applicants know what aesthetic requirements they must satisfy to be able to deploy facilities.

Another FCC order that was released in August 2018 prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues.<sup>14</sup>

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<sup>12</sup> *Id.* ¶ 35.

<sup>13</sup> *Id.* ¶ 37.

<sup>14</sup> See *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 18-111, WC Docket 17-84, WT Docket 17-79 (rel. Aug. 3, 2018).





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While the legal validity of both of these FCC orders is being litigated, both the FCC and a federal court have denied requests to stay the effectiveness of the small cell order pending the resolution of the litigation.<sup>15</sup>

#### Impact of New Regulations on Particular Regulatory Requirements

These new federal regulations significantly affect local discretion over the placement of wireless facilities in the ROW.

Regulations prohibiting facilities in residential areas, or prohibiting placement near schools, for instance, may give rise to a legal challenge under state and federal law. This is particularly true in a community like Los Altos, which is majority-residential. Many cities choose instead to express preferences rather than invoke outright bans.

The same is true with respect to spacing requirements – while the FCC rules do acknowledge there may be aesthetic justifications for spacing requirements, the requirements must be consistent with the framework prescribed for any aesthetic requirements. Lengthy spacing requirements – on the order of hundreds of feet or more between sites – may prove inconsistent with the requirements of small cell technology. Small cell deployments are lower power and industry typically asserts that the range can be as small as 250 or 300 feet, and as a practical matter, many cities have put no limits on spacing. In light of this, extensive spacing requirements may also give rise to legal challenges particularly under federal law. More limited requirements, more firmly grounded in aesthetic concerns (for example limited to new poles in underground areas, or encouraging providers to share poles), may better withstand challenge as regulation to avoid clutter, and are included in the attached Resolution on Design Standards.

Compliance with the new shot clocks, and the legal consequences of violation, impose new practical limitations on procedures and opportunity for public input, as well. Requiring public meetings on each application would not be practical under the shortened shot clocks. Once an application has been filed, there are only very limited ways to pause an FCC shot clock for action on an application – either by sending a timely notice of incompleteness of an application, or by mutual agreement with the applicant.<sup>16</sup> The FCC rules do not contemplate shot clocks to be paused to wait for applicant actions other than responding to notices of incompleteness. Thus, the proposed Ordinance requires the applicant to provide notice to affected residents within three days of submittal of the application, and the contents of the notice has been made more robust to ensure communications are clear and provide residents with necessary information. This will allow residents the opportunity to provide

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<sup>15</sup> See *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, ORDER DENYING MOTION FOR STAY, FCC 18-133, WT Docket 17-79, WC Docket 17-84 (DA 18-1240, rel. Dec. 10, 2018). In January 2019, the Tenth Circuit Court of Appeals denied a stay request but granted a Motion to Transfer. The case is now in the Ninth Circuit as *Sprint v. FCC*, No. 19-70123.

<sup>16</sup> 47 C.F.R. §1.6003(d) and §1.6100(c).



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any comments to the Director and for those comments to be considered before action is taken on the application. Similarly, due to these time constraints and respect for the efficient use of the City Council's time, the proposed Ordinance has appeals going to the City Manager, rather than the City Council. FCC shot clocks are not tolled for appeals, so time is often of the essence to avoid exposing the City to litigation risk.

Other issues cities commonly face in dealing with small wireless facilities include concerns about noise, fire safety, and property values. FCC regulations do permit localities to require compliance with laws of general applicability, such as noise ordinances, and building, electrical, and fire safety codes. The California Public Utilities Commission has primary jurisdiction over safety regulation applicable to utility infrastructure installations, and the City can require compliance with all such regulations, including specifically CPUC General Order 95. California law does not require sellers to disclose cell site locations in the course of a real estate transaction,<sup>17</sup> and attempting to prohibit small cell sites in particular areas on the basis of preservation of property values risks challenge on the same grounds applicable to general prohibitions described above. This issue is better evaluated on a case by case basis, as it will be difficult to justify aesthetic/property value concerns about wireless infrastructure if what is being proposed is no more unsightly than existing utility infrastructure. Case law indicates that where aesthetic or property value-related considerations are really a proxy for concerns about RF emissions, such regulation is impermissible.<sup>18</sup>

As the new FCC regulations are now in effect, staff are taking steps discussed below to address wireless deployments in the ROW consistent with the new federal regulations, and among them, recommends Council adopt an ordinance and resolutions on design and development standards and on fees.

### **Discussion/Analysis**

To address wireless facilities applications in the ROW, staff recommends that the City Council approve the following:

1. Urgency Ordinance No. 2019-460 (Wireless Facilities in the ROW);
2. Resolution No. 2019-35 (Design and Development Resolution); and
3. Resolution No. 2019-36 (Fees Resolution).

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<sup>17</sup> See Cal. Civil Code § 1102 (2019);

<sup>18</sup> See *AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1161-62 (S.D.Cal 2003) (“...the concern over property value depreciation based on fear over RF emissions does not constitute a legitimate basis for an application denial under the TCA.”)





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The ordinance and resolutions work in concert:

- *Ordinance.* The Ordinance would amend Title 11 of the Municipal Code to add Chapter 11.14, Wireless Facilities in the Public Right-of-Way. For all wireless facility installations in the ROW and in public utility easements, this Ordinance provides, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The Ordinance treats wireless installations in the ROW similar to other installations in the ROW by requiring an encroachment permit.

Specifically, the Ordinance sets additional standards and requirements for obtaining an encroachment permit to install wireless facilities. Applications will be received and reviewed by the Department of Public Works, with the Director of that department, or their designee, responsible for acting on applications and ensuring compliance with applicable law. The Director is authorized to develop and publish forms, implement standards governing the placement and modification of facilities, issue notices of incompleteness and requests for information, require notice to the public, act on applications, and take other actions necessary. Appeals of the Director's decisions are to be heard by the City Manager.

The Ordinance also establishes general requirements applicable to all applications concerning placement, and prescribes specific minimum requirements as to application and residential notification contents. It also prescribes notice to be provided by the applicant to all residents and property owners within 300 feet of a proposed location, and all owners and occupants of historically significant structure within 500 feet of a proposed location. Notice is to be provided in a form specified by the Public Works Director including at minimum specific information specified in the Ordinance.

The Ordinance specifies findings which must be made prior to approval, and sets forth conditions which apply to all installations approved under the Ordinance, specifying conditions including, but not limited to, duration, inspections, emergencies, insurance, indemnification, maintenance, RF compliance, and abandonment. Provisions for Eligible Facilities Requests, governed by a separate part of Federal law, and for removal, relocation, and termination are included, as well.

Finally, the Ordinance amends Chapter 11.12 of the Municipal Code, concerning Personal Wireless Services and Facilities, to ensure consistency between its provisions and the new ordinance.

- *Design and Development Resolution.* The Ordinance provides that design and development standards will be established by resolution of the City Council. The Design and Development Resolution provides these standards. Given the frequent and often important changes to the law and technology of wireless installations, especially the pending litigation



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surrounding the FCC Order, design standards-by-resolution affords the City flexibility to readily adapt and tailor its regulations to these changes and the concerns of the City.

- *Fees Resolution.* The Fees Resolution provides for initial application fees based on the FCC-established safe harbor rates. The resolution is tailored to give the City maximum flexibility under the FCC Order to recoup reasonable costs of reviewing and processing these applications. Adopting the fees rules by resolution allows the City greater flexibility to adjust them in future.

In addition to the Ordinance, Design and Development Resolution, and Fees Resolution for City Council approval, City Staff is developing a standard application for wireless facility installations in the ROW and a master license agreement for use of City infrastructure such as streetlights, all of which together will serve as the City's framework for addressing applications for wireless facility installations in the ROW. While the Ordinance authorizes the Public Works Director to develop and implement application forms, City Staff may seek Council approval of the master license agreement in the future.

### **Options**

- 1) Approve the urgency ordinance (requiring an affirmative vote of 4 members of the Council) and accompanying resolutions providing design guidelines and standards and providing a fee schedule.
- 2) Do not approve the ordinance and resolutions.

### **Recommendation**

Staff recommends option 1.

**URGENCY ORDINANCE NO. 2019-460**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS TO AMEND THE MUNICIPAL CODE TO ADD CHAPTER 11.14, "WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY", AND TO REVISE CHAPTER 11.12, "PERSONAL WIRELESS SERVICES AND FACILITIES."**

**WHEREAS**, by virtue of the police powers delegated to it by the California Constitution, the City of Los Altos ("City") has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City's rights, property and privileges, and to preserve peace, safety and good order; and

**WHEREAS**, Chapter 11.12 of the Municipal Code for the City of Los Altos ("Code") governs the installation and modification of personal wireless services facilities in the City, including those in the public rights-of-way; and

**WHEREAS**, significant changes in federal laws that affect limit local authority over wireless communications facilities have occurred since the City Council adopted Chapter 11.12; and

**WHEREAS**, in light of these changes in federal laws, the City deems it necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

**WHEREAS**, therefore the City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Cal. Gov. Code Section 36937(b) because the matters herein concern "the immediate preservation of the public peace, health or safety" of the City's citizens..

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the City Council:

**SECTION 1:** The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

**SECTION 2:** Title 11 of the Municipal Code for the City ("Code") shall be amended to add a new Chapter 11.14, entitled "Wireless Facilities in Public Rights-Of-Way" as follows:

**CHAPTER 11.14. WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY**

**Section 11.14.010 Purpose.**

(a) The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way and public utility easements on private property within the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to

ensure that the public is not incomed by the use of the public rights-of-way 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 to support necessary emergency communications by and between members of the public and first responders, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities in its public rights-of-way. This ordinance shall be interpreted consistent with those provisions.

**Section 11.14.020 Definitions.** The terms used in this Chapter shall have the following meanings:

**Application:** A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.

**Applicant:** A person filing an application for placement or modification of a wireless facility in the public right-of-way.

**City Manager:** the City Manager of the City of Los Altos, or the City Manager's designee

**Base Station:** shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

**Director:** the Director of Engineering Services of the City of Los Altos, or the Director's designee.

**Eligible Facilities Request:** shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

**FCC:** The Federal Communications Commission or its lawful successor.

**Municipal Infrastructure:** City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

**Permittee:** any person or entity granted a wireless encroachment permit pursuant to this Chapter.

**Personal Wireless Services:** shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

**Personal Wireless Services Facility:** means a wireless facility used for the provision of personal wireless services.

**Public Right-of-Way, or ROW:** shall have the same meaning as the term "street" defined in Municipal Code Section 1.04.130(T), but shall also include any portion of any road or public way which the City has the responsibility to maintain or manage, and shall include any public utility easement on private property within the City.

**Small Cell Facility:** shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

- (1) The facility—
  - (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
  - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
  - (iii) does not extend an existing structure on which it are 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 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 47 C.F.R. Section 1.1307(b).

**Support Structure:** Any structure capable of supporting a base station.

**Tower:** Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless 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. This definition does not include utility poles.

**Underground areas:** Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

**Utility Pole:** A structure in the ROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

**Wireless Encroachment Permit:** A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

**Wireless Facility, or Facility:** The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

**Wireless Regulations:** Those regulations adopted pursuant to Section 5 and implementing the provisions of this Chapter.

**Section 11.14.030 Scope.**

- (a) **In general.** There shall be a type of encroachment permit entitled a “wireless encroachment permit,” which shall be required in addition to and not in lieu of any other applicable permit otherwise required by this Code, including but not limited to excavation, traffic, and other construction-related permits. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.
- (b) **Exemptions.** This Chapter does not apply to:
  - (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
  - (2) Installation of a "cell on wheels," “cell on truck” or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- (c) **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the ROW requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.
- (d) **Pre-existing Facilities in the ROW.** Any wireless facility already existing in the ROW as of the date of this Chapter’s adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility’s then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.
- (e) **Public use.** Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City’s use and use by the public.

**Section 11.14.040 Administration.**

- (a) **Engineering Services Director.** The Engineering Services Director or its designee is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:
  - (1) Interpret the provisions of this Chapter;



- (2) Develop and implement standards governing the placement and modification of wireless 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 designs and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts bounding the public rights-of-way;
- (4) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
- (5) Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
- (6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (8) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- (9) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (10) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

**(b) Appeal.**

- (1) Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the Director's decision to the City Manager, which may decide the issues *de novo*, and whose written decision will be the final decision of the City.
- (2) Where the Director 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 City Manager. All appeals must be filed within two (2) business days of the written decision of the Director, unless the Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
- (3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

**Section 11.14.050 General Standards for Wireless Facilities in the Public Rights-of-Way.**

- (a) **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.
- (b) **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are

satisfied, unless it is determined that 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.

- (c) **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.

#### **Section 11.14.060 Applications.**

- (a) **Submission.** Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to: Engineering Services Director, at Los Altos City Hall, 1 North San Antonio Road, Los Altos, California, 94022.
- (b) **Pre-application meeting.** Prior to filing an application for a wireless encroachment permit, an applicant is encouraged to schedule a pre-application meeting with the Director to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility.
- (c) **Content.** An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information necessary to show that applicant is entitled to the wireless encroachment permit requested, and must specify whether the applicant believes state or federal law requires action on the application within a specified time period. Specifically, any application shall include:
  - (1) Any information required pursuant to the wireless regulations;
  - (2) The name and contact information of the entity or entities that will own, and be responsible for the installation and maintenance of, the wireless facility and any support structure installed as part of the installation of the wireless facility;
  - (3) A complete description of the proposed wireless facility and the work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless facility, and specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit and identifying any

structure listed by the City as historically significant within five hundred (500) feet of the facility along the applicable ROW. Before and after 360 degree photosimulations must be provided.

- (4) Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the City Code and the FCC's radio frequency emissions standards.
  - (5) A copy of the lease or other agreement between the applicant and the owner of the property to which the proposed facility will be attached.
  - (6) If the application is for a small cell facility, the application shall state as such and shall explain why the proposed facility meets the definition of small cell facility in this Chapter.
  - (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 show that there is an existing wireless facility that was approved by the City. Before and after 360 degree photosimulations must be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the City Code and the FCC's radio frequency emissions standards.
  - (8) A sample of the proposed notice to be mailed pursuant to subsection (g) of this section, and a list of intended recipients.
  - (9) If 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 City from complying with any deadline for action on an application.
  - (10) The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.
  - (11) Any required fees.
  - (12) Documentation establishing that applicant holds a valid and current business license with the City.
- (d) **Fees.** Application fee(s) shall be required to be submitted with any application for a wireless encroachment permit. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit.
- (e) **Waivers.** Requests for waivers from any requirement of this section shall be made in writing to the Director or his or her designee. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director 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 permit 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 City Code.
- (f) **Incompleteness.** For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and

federal law. If such an application is incomplete, the Director may notify the applicant in writing, and specifying the material omitted from the application.

- (g) **Notice.** Within three (3) business days of submission of an application containing all information required by this Chapter and any associated regulations, an applicant shall provide notice, by mail, to all owners and residents of all property, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units, any part of which is located within three hundred (300) feet of the location of the applicant's proposed facilities and located along the same right-of-way as the proposed facility, and to the owner or occupant of any structure listed as historically significant by the City and located within five hundred (500) feet along the same right-of-way as the proposed facility. Where facilities are proposed at or near intersections, notice shall be provided along all intersecting rights-of-way. Such notice shall be in the form and include the content specified by the Director in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant, and include a plain language description of the proposed facility, photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the Director within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two (2) days after mailing of notices.

#### **Section 11.14.070 Findings; Decisions; Consultants.**

##### **(a) Findings Required for Approval.**

(1) Except for eligible facilities requests, the Director or City Manager, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- (i) The facility is not detrimental to the public health, safety, and welfare;
- (ii) The facility complies with this Chapter and all applicable design and development standards;
- (iii) The facility meets applicable requirements and standards of state and federal law; and

(2) For eligible facilities requests, the Director or City Manager, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- (i) That the application qualifies as an eligible facilities request; and
- (ii) That the proposed facility will comply with all generally-applicable laws.

(b) **Decisions.** Decisions on an application by the Director or City Manager shall be in writing and include the reasons for the decision. A copy of the decision shall be sent to the Applicant and to any person who provided comments on the application.

(c) **Independent Consultants.** The Director or City Manager, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

**Section 11.14.080 Conditions of Approval.**

(a) **Generally.** In addition to any supplemental conditions imposed by the Director or City Manager, as the case may be, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:

- (1) *Code Compliance.* The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of public rights-of-way.
- (2) *Permit Duration.* A wireless encroachment permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless encroachment permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
- (3) *Timing of Installation.* The installation and construction authorized by a wireless encroachment permit 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 wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced, unless written notice of an extension is provided by the Director.
- (4) *Timing of Work.* Construction and destruction/abandonment of any facility may be done on weekdays or Saturdays. Weekday work shall be limited to the hours of 8:00 AM and 6:00 PM., except as noted in applicable lane closure restrictions. Saturday work shall be performed during the hours of 9:00 AM and 6:00 PM
- (5) *Commencement of Operations.* The operation of the approved facility shall commence no later than one (1) month after the completion of installation, or the wireless encroachment permit will expire without further action by the City.
- (6) *Traffic Control Plans.* Prior to construction, site-specific traffic control plans are required to be submitted for review a minimum of ten (10) business days prior to the scheduled start date. Traffic control plans shall be signed by California licensed traffic engineer.
- (7) *Public Noticing.* Prior to construction, permittee shall notify the three (3) closest adjacent property owners to the installation and the three closest property owners directly across the street from the installation at least ten (10) days prior to commencement of any work. In addition, the permittee shall notify the City Communications Department at (650) 948-8223 of street/alley and lane closures at least 24 hours prior to any work. Furthermore, the contractor shall notify the city's Traffic Engineer at least 48 hours in advance of any excavations within 100 feet of any traffic signals.

- (8) *Underground Service Alert (USA)*. Forty-eight (48) hours before commencing work, the Permittee shall contact Underground Service Alert (USA) at 1-800-227-2600 to verify elevations and locations of all existing utilities.
- (9) *Private Sewer Laterals and Water Services*. The City of Los Altos does not mark private sewer laterals or water services in the public right-of-way or public utility easement as part of the Underground Service Alert (USA) program. Permittee is to take precautions to locate and protect private sewer laterals and water services from damage during construction. In the event any sewer lateral damage is discovered, the permittee is required to immediately dig and repair the sewer lateral to restore sewer service. In the event any water service damage is discovered, the Permittee shall immediately contact the City's Water Division at 650-616-7160 to coordinate the repair work. The permittee shall reimburse the City for all costs and expenses in connection with damage repair work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs is provided. If new facilities are being installed by the boring method the permittee is also required to video inspect any sewer and storm mains that are crossed by their facilities as part of this project, a copy of this video is to be provided to the City.
- (10) *As-Built Drawings*. The permittee shall submit an as-built drawing within ninety (90) days after installation of the facility. As-builts may be in an electronic format acceptable to the City.
- (11) *Inspections; Emergencies*. The City or its designee may enter onto the facility area to inspect the facility upon forty-eight (48) hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The city shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within twenty-four (24) hours of doing so.
- (12) *Contact*. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.
- (13) *Insurance*. Permittee shall obtain and maintain throughout the term of the permit commercial general liability and property damage insurance indicating the City of Los Altos as an additional insured. Coverage shall be at least as broad as:

Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, with limits no less than \$1,000,000 or \$2,000,000 aggregate per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. 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 (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

Automobile Liability: 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.

Workers' Compensation/Employer's Liability: Permittee shall certify that it is aware of the provisions of Section 3700 of the California Labor Code 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 it will comply with such provisions before commencing work under this Agreement. To the extent permittee has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement 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.

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 Agreement 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 Agreement.

Umbrella or Excess Liability: Umbrella or Excess Insurance. If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability 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.

The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.

- (14) *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 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 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 City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (15) *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 an amount to be determined by the Director. 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.
- (16) *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.
- (17) *Noninterference.* 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 to accommodate a permitted activity or encroachment, 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 of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, 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 public right-of-way or city utility easement to be affected by Permittee's facilities.
- (18) *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest (including franchise interest) in the public right-of-way, 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.
- (19) *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy

of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee 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 Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

- (20) *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City.
- (21) *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, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET 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.
- (22) *Testing.* 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. For purposes of this requirement, holiday shall mean January 1st, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.
- (23) *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Chapter.
- (24) *Undergrounded Utilities.* In the event that other public utilities or cable television operators in the public right-of-way underground their facilities where the permittee's wireless facility is located, the permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law.
- (25) *Pollutant Discharge Elimination.* Permittee shall comply with the National Pollutant Discharge Elimination System Permit in effect at the time of the application, and shall continue to comply with the Permit as amended by the State Water Board from time to time.
- (26) *Agreement with City.* If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.
- (27) *Conflicts with Improvements.* For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
- (28) *Abandonment.* If a facility is not operated for a continuous period of 6 months, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned

and terminated automatically, unless before the end of the 6 month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

(29) *Encourage Co-location.* Where the facility site is capable of accommodating a co-located 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 co-location of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.

(30) *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 incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

(31) *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, 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 enforcement proceeding.

**(b) Eligible Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the Director or City Manager, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:

(1) *Permit subject to conditions of underlying permit.* Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.

(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 be coterminous with 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) **Small Cell Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the Director or City Manager, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:

- (1) *No waiver of standing.* The city's grant of a permit for a small cell facility request 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.

**Section 11.14.090 Breach; Termination of Permit.**

- (a) **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- (b) **For installation without a permit.** An wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- (c) **Municipal Infraction.** Any violation of this Chapter will be an infraction subject to the penalties for violations of the Municipal Code prescribed in Municipal Code Chapter 1.20, Violations.

**Section 11.14.100 Infrastructure Controlled By City.** The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for, an agreement.

**Section 11.14.110 Nondiscrimination.** In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user

Ordinance No. 2019-460

in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

**SECTION 3:** Chapter 11.12 of the Code shall be amended as follows:

## **CHAPTER 11.12. PERSONAL WIRELESS SERVICES AND FACILITIES**

**Section 11.12.020. Application.** The provisions of this chapter shall apply to all commercial personal wireless services and facilities as defined in the Federal Telecommunications Act.

Wireless communication services and facilities are exempt from these regulations if the facility ~~is regulated by the California Public Utilities Commission, is specifically exempted by the Federal Communications Commission, is an amateur radio antenna facility, or facilities used by the City or by any other agency of the state solely for public safety purposes, is used solely for public safety purposes and is operated by an authorized public safety agency.~~ Facilities meeting the definition of “small cell facility” and located in the “public rights-of-way,” as both terms are defined in Section 11.14.020 of the Municipal Code, shall also be exempt from this Chapter, but remain subject to all other applicable portions of this code, including but not limited to Chapter 11.14, WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY.

**SECTION 4:** The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

**SECTION 5: Urgency Findings.** The City adopts this ordinance as an urgency measure pursuant to Government Code Section 36937(b) to protect the public peace, health and safety.

- a. Since the City Council adopted Chapter 11.12, significant changes in federal laws that affect local authority over wireless communication facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:
  - i. On August 2, 2018, the Federal Communications Commission (“FCC”) adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”), that, among other things, contained a declaratory ruling prohibiting express and *de facto* moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
  - ii. On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, created new shorter “shot clocks” for small wireless facilities (as defined in the September Order); altered existing “shot clock” regulations to require local public agencies to do more in less time; established a national standard for an effective prohibition related to small wireless facilities that replaced the



existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order was made effective 90 days after publication in the Federal Register, that is, on January 14, 2019. The September Order also established that local governments should publish aesthetic standards by April 15, 2019 and that the standards must be in place before an application is submitted in order for the standards to apply to that proposed wireless facility.

- b. In light of the FCC Orders, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.
- c. Further, the FCC Orders are already in effect, so if the City does not immediately amend the Code, there is a risk that the City may not be able to enforce provisions of its Code or comply with the new federal regulations.
- d. The City’s public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community.
- e. If not adequately regulated, the installation of small wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators, all of which may negatively impact the City and its citizens.
- f. Therefore, the City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Cal. Gov. Code Section 36937(b) because the matters herein concern “the immediate preservation of the public peace, health or safety” of the City’s citizens.

**SECTION 6: CEQA.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this

Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara within five working days of the passage and adoption of the Ordinance.

**SECTION 7: Severability.** If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

**SECTION 8:** In accordance with California Government Code Section 36937(b), this ordinance shall become effective immediately upon its passage and adoption.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on \_\_\_\_\_, 2019 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2019 passed and adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Lynette Lee Eng, MAYOR

Attest:

\_\_\_\_\_  
Jon Maginot, CMC, CITY CLERK

**RESOLUTION NO. 2019-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
ADOPTING DESIGN AND SITING GUIDELINES AND ENGINEERING  
DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC  
RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND  
PRIVATE PROPERTIES**

**WHEREAS**, it is in the public interest for the City to establish reasonable, uniform and comprehensive design and siting guidelines for the installation of small wireless facilities in response to Federal and California State law and FCC Order 18-133 which permits wireless infrastructure deployment through relaxation of barriers, affecting the local permit process; and

**WHEREAS**, the guidelines would provide greater direction and assure a degree of consistency in the small wireless facility design and configuration; and

**WHEREAS**, the guidelines would not increase impediments for the installation of small wireless facilities under Federal Telecommunications Act of 1996 but illustrate the desired level of design quality and configuration of any proposed small wireless facility; and

**WHEREAS**, the adoption of design guidelines by resolution will increase administrative efficiencies should future amendments to the guidelines become necessary; and

**WHEREAS**, Chapter 11.14 of the City's Municipal Code governs the permitting, installation, and regulation of obstructions within the City's public rights-of-way (ROW) and within utility easements in public and private properties; and

**WHEREAS**, the City's public rights-of-way and utility easements are a uniquely valuable public resource, closely linked with the City's character, making the regulation of small wireless installations in the public rights-of-way and within utility easements in public and private properties necessary to protect and preserve the aesthetics of the community; and

**WHEREAS**, being authorized to do so, the City wishes to establish design and siting guidelines applicable to small wireless facilities in the public rights-of-way and utility easements in public and private properties; and

**WHEREAS**, these guidelines contained are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include, without limitation, the aesthetic character of the City, its neighborhoods and community; and

**WHEREAS**, these guidelines are also intended to reflect and promote the community interest by: (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3)

protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors; and **WHEREAS**, on July 30, 2019 the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the design and siting guidelines; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby resolves as follows:

**SECTION 1. INCORPORATION OF RECITALS.** The recitals above are each incorporated by reference and adopted as findings of the City Council.

**SECTION 2. DEFINITIONS.** The definitions set forth in Section 11.14.020 of the Municipal Code are incorporated by reference into this Resolution.

**SECTION 3. BACKGROUND AND PURPOSE.** The City of Los Altos is establishing these *Design and Siting Guidelines* for small wireless facilities in the public right-of-way and utility easements in public and private properties in order to regulate the design and placement of this infrastructure.

These *Design and Siting Guidelines* provide objective aesthetic design and siting requirements that all wireless facilities installed within the public right-of-way and utility easements in public and private properties must meet for approval by the City.

Only small wireless facilities as defined in 47 C.F.R. § 1.6002(l) (also referred to as small cells) that meet the requirements of these guidelines are subject to these guidelines. Three different types of small wireless facilities are permitted in Los Altos within the public right-of-way and utility easements in public and private properties. The types include (1) attachments to wooden (or other material) utility poles and utility lines, (2) placement on streetlights and traffic signal control poles, and (3) new freestanding poles. An overview of the guidelines that apply to each type of facility is presented in Section 4.

**SECTION 4: Design Guidelines Applicable to all Small Wireless Facilities.**  
**To ensure minimizing visual impacts, small wireless facilities shall be placed as follows:**

- a. Installations should be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses with regard to appearance, size, and location.
- b. All equipment shall be located within the antenna shroud and where possible behind any street signs located on the pole.
- c. Only one small wireless facility is permitted per structure.
- d. Installations shall be located on poles that are located outside of driveway and intersection sight lines. Where feasible, installations shall be located on poles that

- are located as close as feasible to shared property lines between two adjacent lots and not directly in front of residences and businesses.
- e. Equipment shall be located entirely on the pole in a vertical arrangement. Exterior mounted accessory equipment shall not collectively exceed 9 cubic feet in volume, exclusive of concealment elements like shrouding.) Required meters and disconnect switches that are infeasible to be shrouded for safety and/or accessibility reasons are excluded from this shrouding recommendation.
  - f. Ground-mounted equipment is permitted in locations that do not obstruct pedestrian or vehicular traffic. Ground-mounted equipment is not permitted if the approval authority finds that the above-ground equipment would unreasonably interfere with the public's ability to use the right-of-way for uses that include without limitation travel, social, expressive and/or aesthetic uses. The approval authority may condition approval on new or enhanced landscaping to conceal ground-mounted equipment.
  - g. All equipment (other than the antenna, antenna supports, ancillary wires, cables and any electric meter) shall be installed underground in any area in which the existing utilities are not primarily located above ground.
  - h. All cables, wires and other connectors should be routed through conduits within poles whenever possible, and all external conduits, conduit attachments, cables, wires and other connectors must be concealed from public view.
  - i. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under existing and future FCC or other United States governmental agencies for compliance with RF emissions regulations. RF notification signs shall be placed where appropriate, and not at pedestrian eye level, unless required by the FCC or other regulatory agencies.
  - j. Facilities should use PG&E Smart Meters or flat-rate billing. Ground-mounted electric meters are prohibited.
  - k. Small wireless facilities shall not be located on decorative streetlights.
  - l. Small wireless facilities shall not be installed such that the facility damages existing trees. The approval authority may condition approval based on tree assessment results provided by a certified arborist. If pruning is required for the installation, a separate permit must be obtained.
  - m. Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, the applicable ambient noise level standards in Los Altos Municipal Code Chapter 6.16 Noise Regulations.
  - n. Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 50 feet. Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of pole or top of antenna, whichever is greater.
  - o. Wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. All wireless facilities shall be constructed from graffiti-resistant materials.

- The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- p. All wireless facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility.
  - q. No person shall install, use or maintain any facilities, which in whole or in part rest 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 facilities unreasonably interfere with or unreasonably impede 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 the location where the wireless facilities are located.
  - r. No portion of any wireless communications facility shall overhang a property line. This restriction shall apply to any portion of any antennas as they rotate or are in a fixed position.
  - s. Applicants are encouraged to design wireless communications facilities to serve as public art, particularly in rights-of-way adjacent to commercial, office, or retail zoning districts.
  - t. Unless otherwise required by applicable Federal rules or regulations, no wireless communications facility shall propose new exterior lighting, except as required by the Uniform Building Code, Uniform Electrical Code, for emergencies, or to replace and upgrade existing lighting.
  - u. Disturbance of existing topography and on-site vegetation shall be minimized, unless such disturbance would substantially reduce the visual impacts of the facility.
  - v. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act or otherwise obstruct access.

**SECTION 5: Design Guidelines Applicable to Small Wireless Facilities on Wooden or Other Utility Poles and Utility Lines.**

- a. All installations on utility poles shall fully comply with the California Public Utilities Commission (CPUC) general orders (GOs), including, but not limited to, GO 95. None of the following design guidelines are meant to conflict with or cause a violation of GO 95, including, but not limited to, its guidelines for a safe installation on a utility pole. Accordingly, size limits can be adjusted at the Director's discretion to ensure compliance with CPUC rules on safety.
- b. All wireless facility equipment installed on poles should be completely contained within equipment shroud. Equipment shroud and lines should be painted, treated or finished to match existing utility pole and line aesthetics. Utility line installations should be colored to a non-reflective color.

- c. The top of the antenna, if top mounted, should be no higher than 48” above the minimum separation from supply lines required by GO 95, exclusive of the required antenna mounting bracket. The antenna should be shrouded.
- d. The extension of the antenna if side mounted shall extend no more than 48” from the sides of the pole.
- e. Only one equipment shroud, containing all required accessory equipment, shall be installed per pole. Shrouds shall project no more than 18” off the pole, measured to the outermost point, and measure no more than nine cubic feet in size.
- f. All antennas shall be shrouded. Antenna shrouds should have an outer diameter of 15” or less and measure no more than five cubic feet in size. The shroud shall be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
- g. The shroud around the antenna shall be no more than 30 percent greater in diameter than the utility pole it is attached, exclusive of the pole mounting device, to and the transition between the pole and the shroud shall be tapered where feasible.
- h. All cables shall be hidden within cable conduit that is painted, treated or finished to match existing utility pole aesthetics in finish and color.

**SECTION 6: Design Guidelines Applicable to Small Wireless Facilities on Streetlights and Traffic Signal Control Poles.**

- a. Equipment shall be painted, treated or finished to match existing street light pole and traffic signal control pole aesthetics and materials in finish and color.
- b. The antenna shall be mounted at the top of the streetlight pole or traffic signal control pole where the arm extends from the pole where feasible. The top of the antenna if top mounted should be no higher than 48” above the top of the existing pole.
- c. All antennas shall be shrouded. Antenna shrouds should have an outer diameter of 15” or less and measure no more than five cubic feet in size. The shroud should be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
- d. Antenna shroud should be no more than 30 percent greater in diameter than the streetlight or traffic signal control pole it is attached to and the transition between the pole and the shroud should be tapered.
- e. All cables, wires, and other connectors should be hidden within the base and shaft of the streetlight or traffic signal control pole. Where this is not feasible, the equipment should be installed in an underground vault.

**SECTION 7: Design Guidelines Applicable to Small Wireless Facilities on New Poles**

- a. New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these Guidelines than installations on existing structures near the project site.

- b. No artificial trees, rocks, or similar natural features are permitted.
- c. Poles not located within open space areas shall be designed to resemble existing standalone streetlights in the vicinity.
- d. Poles shall have a maximum diameter of 20 inches and shall be tapered wherever possible.
- e. When technically feasible, all antennas and associated equipment shall fit within the diameter of the poles with no exterior wires or conduit. If all antennas and equipment cannot fit within the pole for technical reasons, then the installation shall be subject to the standards above.
- f. Pole material and finishes should match the existing materials of the City standard streetlight poles or match aesthetics and materials of existing decorative poles.
- g. Pole heights shall be minimized, but in no case should the maximum height of any facilities exceed 50 feet. Legally required lightning arresters and beacons should be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of antenna or top of highest pole attachment, whichever is greater.
- h. Antennas should be mounted on the top of the pole.
- i. Relocated poles may be subject to guidelines in this section and their respective pole type section.

#### **SECTION 8: Siting Guidelines for Small Wireless Facilities**

- a. Preferred Siting Locations. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. All applicants for a small wireless facility permit must propose new wireless facilities in locations within the public rights-of-way or utility easements in public and private properties according to the following preferences, ordered from most preferred to least preferred:

- (1) Commercial districts (as defined in Section 14.04.010(K-R) of the Code).
- (2) Other districts (as defined in Section 14.04.010(S-T, V) of the Code).
- (3) Residential districts (as defined in Section 14.04.010(A-J, U, W) of the Code).

The preference of a proposed site shall be evaluated based on the district(s) adjacent to the ROW or public utility easement in which the proposed site is to be located.

- b. Preferred Support Structures. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred support structures are technically feasible and potentially available. All applicants for small wireless facilities must propose new wireless facilities on support structures within the public rights-of-way according to the following preferences, ordered from most preferred to least preferred:

- (1) New facilities on existing utility poles or support structures;
- (2) New facilities on existing or replacement streetlights or new or replacement traffic signal control poles;
- (3) New facilities on new standalone support structures.



- c. Facilities shall not be located in front of business windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.
- d. Facilities should be located near shared property lines between two adjacent lots as much as possible or along a secondary rear property street frontage.
- e. Mid-block locations are preferred instead of at more visible corners and street intersections except if proposed on traffic signal control poles.
- f. New poles should be located in the parkway strip whenever possible and in alignment with existing trees, utility poles, and streetlights.
- g. New poles should be an approximately equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- h. A small wireless facility should be no closer than 500 feet away, radially, from another small wireless facility.

**SECTION 9: Engineering Design Standards Applicable to all Small Wireless Facilities.**

**The following engineering design standards apply:**

- a. Separation of service shall be provided by installing all new electrical conduit(s) or utilizing empty conduit(s) with conduit owner's expressed consent in writing.
- b. Disconnect switch should be mounted on the pole. Bottom of disconnect switch should measure ten (10) feet above grade.
- c. All equipment, including the shroud, should be mounted to provide ten (10) feet of clearance from the ground.
- d. For proposed facilities on streetlight or traffic signal control poles, a hand hole should be provided at the top of the pole to maintain fiber and electrical service for streetlights and future attachments.
- e. Pole foundation calculations should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review. Pole foundation calculations should account for all new and existing pole attachments and the pole.
- f. Pole structural calculations, including seismic loads, showing the load impacts of the wireless facility on City streetlight and traffic signal control poles should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review.
- g. Design wind velocity should be 115 mph minimum per TIA-222 rev G, IBC 2012 with ASC 710, and amendments for local conditions.
- h. For new freestanding poles, install eight 2-inch PVC (Schedule 40 or better) conduit sweeps to accommodate small wireless facilities (electrical and fiber) with up to four separate sweeps for future service.
- i. Asphalt concrete section for trench backfill shall be a thickness equal to the existing pavement, or 4-inches thick minimum, whichever is greater.

**SECTION 10.** If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or

applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

**SECTION 11.** The City Clerk shall certify the adoption of this Resolution and cause it, or a summary of it, to be published as required by law.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the \_\_\_\_ day of \_\_\_\_, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Lynette Lee Eng, MAYOR

Attest:

---

Jon Maginot, CMC, CITY CLERK

**RESOLUTION NO. 2019-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
ESTABLISHING A FEE SCHEDULE FOR WIRELESS ENCROACHMENT  
PERMITS TO INSTALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-  
WAY UNDER CITY MUNICIPAL CODE CHAPTER 11.14**

**WHEREAS**, Chapter 11.14 of the City's Municipal Code governs the permitting, installation, and regulation of personal wireless services in the City's public right-of-way (ROW); and

**WHEREAS**, Section 11.14.030(a) requires approval of a wireless encroachment permit to install and operate such facilities; and

**WHEREAS**, the City Council wishes to establish a fee schedule for wireless encroachment permits; and

**WHEREAS**, the purpose of setting fees is to cover the City's costs for processing applications for wireless encroachment permits; and

**WHEREAS**, the fee amounts established herein are based upon fee levels specified as safe harbors by the Federal Communications Commission for permits for small wireless facilities located in the ROW, as governed by Chapter 11.14; and

**WHEREAS**, such fee levels may be revised in the future at such a time as the City conducts a cost study to identify its costs in processing such applications, which costs it is permitted by law to recover; and

**WHEREAS**, on July 30, 2019, the City Council conducted and concluded a duly noticed public meeting as required by law and received testimony from City staff and all interested parties regarding the fee; and

**WHEREAS**, all legal prerequisites to the adoption of the Resolution have occurred.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby resolve as follows:

**SECTION 1. Findings.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. Definitions.** The definitions set forth in Section 11.14.020 of the Municipal Code are incorporated by reference into this Resolution.

**SECTION 3. Administration.** The collection, processing, and other acts contemplated in this Resolution shall be administered by the Director of Engineering Services, who is hereby authorized to take all actions on behalf of the City with regard to this Resolution.

**SECTION 4. Interim Fees.** From the date hereof until the City establishes fees pursuant to a cost study, the following fees shall apply:

Permit	Code Section	Initial Fee [and/or Deposit]
Wireless Encroachment Permits  - small cell collocation applications	11.14.030	\$500.00 per application for an application containing up to five (5) facilities, with an additional \$100.00 for each facility beyond five (5)
- applications not constituting a collocation		\$1,000.00 per application

**SECTION 5. Severability.** If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**SECTION 6. Certification of Resolution.** The City Clerk shall certify to the adoption of this Resolution and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of Los Altos, and shall post a certified copy of this Resolution, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code Section 36933.

**SECTION 7. Records.** The documents and materials associated with this Resolution that constitute the record of proceedings on which the City Council’s findings and determinations are based are located at Los Altos City Hall.

**SECTION 8. Publication of Resolution.** The City Clerk shall certify the adoption of this Resolution and cause it, or a summary of it, to be published as required by law.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the \_\_\_ day of \_\_\_\_, 2019 by the following vote:

AYES:

NOES:  
ABSENT:  
ABSTAIN:

---

Lynette Lee Eng, MAYOR

Attest:

---

Jon Maginot, CMC, CITY CLERK



1 North San Antonio Road  
Los Altos, California 94022-3087

## MEMORANDUM

**DATE:** July 24, 2019  
**TO:** Chief Galea  
**FROM:** Captain McCrossin  
**SUBJECT:** **PUBLIC SAFETY COMMUNICATIONS**

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Public Safety Communications are critical for receiving information, maintaining situational awareness, notifying the public and deploying resources effectively. As California sees an increase in natural disasters such as wildfires, floods and more recently large earthquakes in Southern California, Public Safety Communications continue to be a priority for the California Office of Emergency Services (Cal-OES). Coordination of public safety mutual aid resources during human caused events is just as dependent upon reliable, robust communications.

Public safety entities must be able to communicate efficiently and effectively across jurisdictional boundaries. Police and Fire personnel operate in a Unified Command Structure within the State Emergency Management System (SEMS) framework. These operations can be hindered by a lack of communication between the command post, department operations centers and emergency operations centers. Santa Clara County has taken a significant step in enhancing communications interoperability via the Silicon Valley Radio Communications System (SVRCS). Multi-layer redundancy was built into the system, but there are still possibilities for failure, so additional communications enhancements are a benefit to public safety.

Public notification during emergencies is essential. Early warnings pertaining to evacuations can save lives and prevent overly congested roadways as people flee in panic rather than departing in an organized and coordinated manner. Everbridge AlertSCC is the primary platform for public

notification to residents in Santa Clara County. Though the system has proven effective in many emergency situations, it too is limited by the infrastructure of the communications platform upon which it transmits data. In most cases, this involves cellular communications networks.

In California, we have experienced emergencies which highlight the importance of hardening communications systems across the board. For instance, residents in Paradise, CA experienced failures in Butte County's early warning systems during the Camp Fire. Thousands of messages were delayed or lost due to both damaged and overloaded communications. Many residents self-evacuated without ever receiving a warning. Residents in parts of bordering Chico were never notified, though there were several hours before those communities were reached by the Camp Fire. Much of the failure was due to damaged communications structures and/or overloaded networks. A Santa Clara County vehicle was sent to the Carr Fire in Mendocino County and was severely hampered in effective communications due to a well-known cellular carrier reducing data speeds during that disaster.

All these critical communications abilities are important, not only during an event, but during the recovery phase, well beyond the initial incident. Communications related to shelters, reunification and other public services must be disseminated to the public for the operations of an effective recovery process. Public Safety entities must maintain their ability to respond to recovery events, new emergencies and general calls for service. Communications coverage and capacity are critical for the continuity of public safety operations.

In 2012 Congress enacted the Middle-Class Tax Relief and Job Recovery Act of 2012 (Spectrum Act) which:

- Directed the allocation of BAND 14 (758-763 MHz / 788-793 MHz) to public safety for use in a nationwide broadband network; and
- Formed the First Responder Network Authority (FirstNet) as an independent authority within the U.S. Department of Commerce. FirstNet is charged with responsibilities for deploying and operating the nationwide public safety broadband network and will hold the license for both the existing public safety broadband spectrum (763-769 MHz/793-799 MHz)

and the reallocated BAND 14. Band 14 provides better transmission in urban and rural environments, including good penetration through buildings.

- Funds were allocated to FirstNet to construct this nationwide public safety broadband network.

In March 2017 AT&T was awarded the contract to build FirstNet. In December 2017 Governor Brown signed the contract to opt-in to FirstNet for the State of California. To date, all 50 states and Puerto Rico have opted into FirstNet. FirstNet offers a dedicated public safety network on Band 14, as well as priority preemption on the commercial cellular communications network, allowing critical communications during emergencies. These communications relate not only to cellular voice and data, but other communications associated with public safety Mobile Data Terminals (MDTs), Computer Aided Dispatch (CAD), and Nextgen 911 technology, including Text to 911 capabilities. Cellular voice and data communications will be an additional option for public safety in the event the Silicon Valley Radio Communications System (SVRCS) and/or the legacy analog radio communications system are disrupted. The build-out of FirstNet works hand in hand with increasing coverage and capacity for the public. This relates to both 4G and future 5G technology. AT&T may seek to leverage existing broadband projects in the interest of expanding and creating resiliency with FirstNet.

5G transmits larger amounts of data in less time (up to 2GB/sec). 5G utilizes small cell nodes, which must be situated closer together because the technology only allows transmissions to occur between shorter distances. Macrocells are larger cellular communications structures, which provide radio coverage for cellular networks over greater distances. These can be installed in the ground, on rooftops or other structures, but only if they are higher than other structures or natural terrains, with a clear view of the surroundings to prevent signal obstruction. Microcells are smaller cells, which are low-powered radio access nodes. In short, macrocells are for coverage and microcells are for capacity. In the public safety environment, fewer nodes means less capacity and would effectively hinder FirstNet Band 14 build out. Remaining on macro cells alone is not effective because with increased use, connection will erode over time.



**ADDED TO THE COUNCIL REPORT BY MAYOR LEE ENG**

**Chapter ~~20.73~~11.14 WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

**SECTION ~~11.14.20.73.010~~ Purpose.010 Purpose.**

A. 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 of ~~Mill Valley~~Los Altos. 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 to: (1) preserve and promote harmonious land uses and the public right-of-way in the City; (2) 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; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.

B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section ~~11.14.020~~ ~~20.73.020~~ Definitions.20.73.020 Definitions.**

For the purposes of this chapter, the following defined terms shall have the meaning set forth in this section unless the context clearly indicates or requires a different meaning.

1. "Accessory equipment" means any equipment associated with the installation of a wireless telecommunications facility, including, but not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.
2. "Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does

not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

3. “Base station” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), as may be amended, which defines that term as 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. Section 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. Section 1.40001(b)(1)(i) and (ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. Section 1.40001(b)(1)(i) and (ii).

4. “Building-mounted” means mounted to the side or façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

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

[6. “City Manager” means the City Manager of the City of Los Altos , or the City Manager’s designee](#)

[76.](#) “Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting 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 telecommunication facility installed at a single site.

[87.](#) “Eligible facilities request” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.

[98.](#) “Eligible support structure” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, which defines that term as any 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.

[109.](#) “Existing” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, 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.

119. "FCC" means the Federal Communications Commission or its duly appointed successor agency.

124. "Modification" means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation.

132. "Monopole" means a structure consisting of a single pole used to support antennas or related equipment and includes a monopine, monoredwood, and similar monopoles camouflaged to resemble trees or other objects.

143. "Personal wireless services" means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

154. "Personal wireless service facilities" means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

~~15. "Zoning Administrator" means the City Zoning Administrator or the City Zoning Administrator's designee.~~

16. "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 the [Los Altos Mill Valley](#) Municipal Code.

17. "Public right-of-way or "right-of-way" means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.

18. "Reviewing authority" means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.

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

20. "Roof-mounted" means mounted directly on the roof of any building or structure, above the eave line of such building or structure.

21. "Section 6409(a)" 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. Section 1455(a), as such law may be amended from time to time.

22. "Section 6409(a) approval" means the approval required by Section 6409(a).

23. "Site" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(6), as may be amended, which provides that for 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.

24. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

- a. For towers outside the public rights-of-way, a substantial change occurs when:
  - i. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
  - ii. 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
  - iii. 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
  - iv. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
  - i. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - ii. The proposed collocation or modification increases the width more than six feet from the edge of the wireless tower or base station; or
  - iii. 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
  - iv. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are 10% larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition, for all towers and base stations wherever located, a substantial change occurs when:

- i. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the ~~Zoning Administrator~~City Manager; or
- ii. 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).

25. “Telecommunications tower” or “tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.
26. “Transmission equipment” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
27. “Utility pole” means a 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.
28. “Wireless services” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.
29. “Wireless telecommunications facility” means any facility constructed, installed, or operated for wireless service. “Wireless telecommunications facility” includes, but is not limited to, antennas or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development. “Wireless telecommunications facility” does not mean any of the following:
  - a. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission’s Rules, or its successor regulation.
  - b. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to, direct-to-home satellite dishes that are less than one meter in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.

- c. Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the [City Manager/Zoning Administrator](#).
- d. Telecommunications facilities owned and operated by any government agency.
- e. Telecommunications facilities owned and operated by any emergency medical care provider.
- f. Mobile services providing public information coverage of news events of a temporary nature.
- g. Any wireless telecommunications facilities exempted from the [Mill Valley/Los Altos Municipal Code](#) by federal law or state law. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.03020-73.030 Applicability-20-73.030- Applicability.**

- A. This chapter applies to all wireless telecommunications facilities as follows:
  - 1. All facilities for which applications were not approved prior to the effective date of the ordinance codified in this chapter shall be subject to and comply with all provisions of this chapter;
  - 2. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance, cessation of use and abandonment, removal and restoration of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities; provided, however, that in the event a condition of approval conflicts with a provision of this chapter, the condition of approval shall control unless and until the permit is amended or revoked.
- B. Title 20, including, but not limited to, this chapter shall not apply to a wireless telecommunications facility on property owned by the City.
- C. Notwithstanding any provision of the [Mill Valley/Los Altos Municipal Code](#) to the contrary, provisions governing the installation of a public utility facility or accessory equipment shall not apply to wireless telecommunications facilities. This chapter shall govern all applications for wireless telecommunications facilities. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.040 20-73.040 Wireless telecommunications facility permit required-20-73.040-Wireless telecommunications facility permit required.**

- A. **Permit Required.** No wireless telecommunications facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of a permit as required by this chapter as set forth in the table below. Such permit shall be in addition to any other permit required pursuant to the [Mill Valley/Los Altos Municipal Code](#).

<i>Description Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of-Way<sup>43</sup></i>
	<i><u>RS, RSP, DR, MFRA-J, U, W<sup>1</sup> Zoning Districts</u></i>	<i>All Other Zoning Districts</i>	<i>Nonresidential Zoning Districts</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request <sup>2+</sup> or application pursuant to California <a href="#">Government Code</a> Section 65850.6 <sup>32</sup>	Permitted	Permitted	Permitted

<sup>1</sup> See Section 14.04.010 (A-J, U, W) of the Code.

<sup>2+</sup> See requirements of Section ~~20.73.140~~11.14.140.

<sup>32</sup> See requirements of Section ~~20.73.150~~11.14.150.

<sup>43</sup> For any public right-of-way not within a zoning district, the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location.

B. **Non-exclusive Grant.** No 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 delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.050 ~~20.73.050~~ Application for permit. ~~20.73.050~~ Application for permit.**

A. **Application Content.** All applications for a permit required by this chapter must be made in writing on such form as the ~~City Manager~~Zoning Administrator prescribes, which shall include the following information, in addition to all other information determined necessary by the City Manager~~Zoning Administrator~~ as well as all other information required by the City as part of an application for a conditional use permit:

1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization.



2. The type of facility, including a full written description of the proposed facility, its purpose and specifications.
3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the [City Manager/Zoning Administrator](#).
4. Photographs of facility equipment and an accurate visual impact analysis with photo simulations.
5. Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or other approvals required by the FCC.
6. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
7. A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years.
8. A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment including, without limitation, all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with [Los Altos Municipal Code Chapter 7.166.16 \(Noise Control\) Regulations](#). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
9. If the applicant claims it requires an exception to the requirements of this chapter, all information and studies necessary for the City to evaluate that claim.
10. An application and processing fee and a deposit for a consultant review as set forth in subsection B of this section.
11. Any other studies or information determined necessary by the [City Manager/Zoning Administrator](#) may be required.
12. All applications will be posted to the City of Los Altos website within 3 days of receipt of the application. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.
13. A master plan which identifies the location of the proposed facility in relation to all existing and potential locations in the City that are reasonably anticipated for construction within two years of submittal of the application. Applicants may not file, and the City shall not accept, applications that are not consistent with the master plan for a period of two years from approval of a wireless facility use permit unless: (a) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless telecommunications facility site not shown on a master plan submitted to the City within the prior two years; (b) the applicant establishes that the application is needed to



prevent the actual or effective prohibition of the provision of telecommunications wireless services under the Telecommunications Act of 1996.

14. A siting analysis which identifies a minimum of five other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for fewer than the minimum. The alternative site analysis should include at least one collocation site, if feasible.

15. The city would invite

**B. Independent Expert.**

1. The ~~City Manager~~~~Zoning Administrator~~ is authorized to retain on behalf of the City an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including, but not limited to, the following matters:

- a. The accuracy, adequacy, and completeness of submissions;
- b. Compliance with applicable radio frequency emission standards;
- c. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- d. Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis; and
- e. The validity of conclusions reached or claims made by applicant.

2. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. ~~(Ord. 1304 § 1, September 6, 2018)~~

C. Notice. Within three (3) business days of submission of an application containing all information required by this Chapter and any associated regulations, an applicant shall provide notice, by mail, to all owners and residents of all property, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units, any part of which is located within one thousand (1,000) feet of the location of the applicant's proposed facilities and located along the same right-of-way as the proposed facility. Where facilities are proposed at or near intersections, notice shall be provided along all intersecting rights-of-way. Such notice shall be in the form and include the content specified by the Director in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant, and include a plain language description of the proposed facility, photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the Director within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two (2) days after mailing of notices

D. Property Owner Authorization. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.

**Section 11.14.06020.73.060 Location and configuration preferences.20.73.060**  
**Location and configuration preferences.**

A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the reviewing authority regarding the preferred locations and configurations for wireless telecommunication facilities in the City, provided that nothing in this section shall be construed to permit a wireless telecommunication facility in any location or configuration that it is otherwise prohibited by this chapter.

B. **Review of Location and Configuration.** The reviewing authority shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

C. **Order of Preference—Configurations.** The order of preference for the configuration for wireless telecommunication facilities from most preferred to least preferred is:

1. Collocation with existing facilities;
2. Roof-mounted;
3. Building-mounted;
4. Mounted on an existing pole or utility pole;
5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole;
6. Mounted on a new telecommunication tower.

D. **Order of Preference—Location.** The order of preference for the location of wireless telecommunications facilities from most preferred to least preferred is:

1. ~~In the C-G zoning district~~Commercial districts (as defined in Section 14.04.010 (K-R) of the Code).;
2. ~~In the C-N zoning district~~Other districts (as defined in Section 14.04.010 (S-T,V) of the Code).;
3. ~~In the C-L zoning district;~~
4. ~~In the C-D zoning district;~~
5. ~~In the public right of way with the closest adjacent district being the C-G district;~~
6. ~~In the public right of way with the closest adjacent district being the C-N district;~~
7. ~~In the public right of way with the closest adjacent district being the C-L district;~~
8. ~~In the public right of way with the closest adjacent district being the C-D district;~~
9. ~~Any public right of way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the register of historic places.~~

E. **Accessory Equipment.** In order of preference from most preferred to least preferred, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities shall be located underground, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is preferable under the circumstances of the application. ~~(Ord. 1304 § 1, September 6, 2018)~~

[Section 11.14.070](#) ~~[20.73.070](#)~~ [Design and development standards for all facilities.](#)  
~~[20.73.070](#)~~ [Design and development standards for all facilities.](#)

- A. **Basic Requirements.** The design and development standards set forth in this section apply to all wireless telecommunications facilities no matter where they are located. Wireless telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section.
- B. **No Speculative Facilities.** A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the City.
- C. **General Guidelines.** The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.
- D. **Traffic Safety.** All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
- E. **Antennas.** The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.
- F. **Landscaping.** Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the City to provide screening or to block the line of sight between facilities and adjacent uses.
- G. **Signage.** Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.
- H. **Lighting.** No wireless telecommunications facility may be illuminated unless either specifically required by the Federal Aviation Administration or other government agency or in association with the illumination of an athletic field on City or school property. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers, and monopoles.
- I. **Noise.**
1. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.

2. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

3. At no time shall equipment noise from any facility exceed an exterior noise level of 50 dBA at the facility's property line if the facility is located in a business or commercial zone that permits those uses, provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.

4. Any equipment, including, but not limited to, air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the [Los Altos Mill Valley Municipal Code](#).

J. **Security.** Each wireless telecommunications facility and wireless telecommunications collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance.

K. **Modification.** At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities. ~~(Ord. 1304 § 1, September 6, 2018)~~

L. **RF Exposure Compliance.** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the Town an affidavit which shall list all active small cell wireless installations it owns within the Town by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the Town as an additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits.

M. **Testing.** Testing of any equipment shall take place at any time of day that the City Council deems appropriate. The City shall have the right to employ a qualified RF engineer to conduct an annual random and unannounced test of the permittee's small cell wireless installations located within the City to certify their compliance with all FCC radio-frequency emission limits as they pertain to exposure to the general public. The reasonable cost of such tests shall be paid by the permittee.

**~~Section 11.14.08020-73.080 Additional design and development standards for facilities outside the public right-of-way. 20.73.080- Additional design and development standards for facilities outside the public right-of-way.~~**

A. **Basic Requirements.** Facilities located outside the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.

B. **No Parking Interference.** In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.

C. **Roof-Mounted Facilities.** Roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor alter the character of the structure.

D. **Facilities Mounted to a Telecommunications Tower.** Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.

1. Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet FCC requirements. The applicant shall provide documentation satisfactory to the [City Manager/Zoning Administrator](#) establishing compliance with this paragraph. In any event, facilities mounted to a telecommunications tower shall not exceed the applicable height limit for structures in the applicable zoning district.

2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.

3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

6. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

E. **Accessory Equipment.** All accessory equipment associated with the operation of any wireless telecommunications facility shall be fully screened or camouflaged, and located in a manner to

minimize their visibility to the greatest extent possible utilizing the following methods for the type of installation:

1. Accessory equipment for roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible. If not feasible, such accessory equipment may be located on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.
2. Accessory equipment for facilities mounted to a telecommunications tower shall be visually screened by locating the equipment either within a nearby building, in an underground vault (with the exception of required electrical panels) or in another type of enclosed structure, which shall comply with the development and design standards of the zoning district in which the accessory equipment is located. Such enclosed structure shall be architecturally treated and adequately screened from view by landscape plantings, decorative walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.09020.73.090 Additional design and development standards for facilities in the public right-of-way.20.73.090- Additional design and development standards for facilities in the public right-of-way.**

- A. **Basic Requirements.** Facilities located in the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.
- B. **Right-of-Way Authority.** An encroachment permit must be obtained for any work in the public right-of-way. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the City shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.
- C. **Antennas.**
  1. **Utility Poles.** The maximum height of any antenna mounted to an existing utility pole shall not exceed 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.
  2. **Street Light Poles.** The maximum height of any antenna mounted to a street light pole shall not exceed seven feet above the existing height of a street light pole in a location with its closest adjacent district being a commercial zoning district and shall not exceed three feet above the existing height of a street light pole in any other zoning district. Any portion of the antenna or equipment mounted on such a pole shall be no less than 18 feet above any drivable road surface.
- D. **Poles.**
  1. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.

2. Pole height and width limitations:
  - a. All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.
  - b. Notwithstanding the above, no facility shall be located on a pole that is less than 26 feet in height and no facility shall exceed 35 feet in height, including, but not limited to, the pole and any antenna that protrudes above the pole.
  - c. Pole mounted equipment shall not exceed six cubic feet in dimension.
3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this section. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven feet.
4. If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced, unless another design better accomplishes the objectives of this section. Such new poles that are not replacement poles shall be located no closer than 90 feet to an existing pole.

E. **Space Occupied.** Facilities shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

F. **Location.**

1. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists.
2. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
3. Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.
4. Each pole mounted wireless telecommunications facility must be separated by at least 1,500 feet.
5. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.
6. All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

G. **Americans with Disabilities Act Compliance.** All facilities shall be built in compliance with the Americans with Disabilities Act (ADA).

H. **Accessory Equipment.** With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground to the extent feasible.



When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged.

I. **Documentation.** The applicant shall provide documentation satisfactory to the [City Manager/Zoning Administrator](#) establishing compliance with this section. (~~Ord. 1304 § 1, September 6, 2018~~)

**Section 11.14.10020-73.100 Conditions of approval for all facilities.20-73.100- Conditions of approval for all facilities.**

A. In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. Before the permittee submits any application for a building permit or other permits required by the [Mill Valley/Los Altos](#) Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “approved plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. Where feasible, as new technology becomes available, the permittee shall:
  - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
  - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the [Mill Valley/Los Altos](#) Municipal Code.
3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
  - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
  - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.
  - c. Name, address, and telephone number of the property owner if different than the permittee.



4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
5. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration. The City shall retain a consultant, at the sole expense of the permittee, to perform testing demonstrating compliance with current regulatory and operational standards. Tests shall occur upon commencement of operations and annually thereafter.
7. If the [City Manager/Zoning Administrator](#) determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the [City Manager/Zoning Administrator](#) may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.
8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the [Mill Valley/Los Altos](#) Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the [City Manager/Zoning Administrator](#) in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.
9. Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed Council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.
10. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.

11. A condition setting forth the permit expiration date in accordance with Section ~~20.73.200~~11.14.200 shall be included in the conditions of approval. ~~(Ord. 1304 § 1, September 6, 2018)~~

~~Section 11.14.110~~20.73.110 ~~Additional conditions of approval for facilities in the public right-of-way.~~ Additional conditions of approval for facilities in the public right-of-way.

A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in Section ~~11.14.100~~20.73.100, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the City engineer for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
2. 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 to accommodate a wireless telecommunications facility 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 of the City's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, 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 public right-of-way to be affected by applicant's facilities.
3. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
4. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to, 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 utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. 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. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the City Manager~~Zoning Administrator~~, the City Manager~~Zoning Administrator~~ shall cause such repair to be completed at permittee's sole cost and expense.

5. Prior to issuance of a building permit, the applicant shall obtain the [City Manager Zoning Administrator](#)'s approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a 10-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than 10 feet may be required by the [City Manager Zoning Administrator](#).
6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.
7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to the City, if and when made necessary by:
  - a. Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including, but not limited to, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by the City or any other public agency;
  - b. Any abandonment of any street, sidewalk, or other public facility;
  - c. Any change of grade, alignment or width of any street, sidewalk or other public facility; or
  - d. A determination by the [City Manager Zoning Administrator](#) that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.
8. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by the City unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a permit amendment pursuant to the [Mill Valley Los Altos](#) Municipal Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the [Mill Valley Los Altos](#) Municipal Code allow. In the event the facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the [Mill Valley Los Altos](#) Municipal Code, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter. (~~Ord. 1304 § 1, September 6, 2018~~)

#### **Section 11.14.12020.73.120 Findings.20.73.120- Findings.**

- A. Where a wireless telecommunication facility requires a conditional use permit under this chapter, the reviewing authority shall not approve any application unless, in addition to the findings generally applicable to all conditional use permits, all of the following additional findings are made:
  1. The proposed facility complies with all applicable provisions of this chapter.
  2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
  4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.
- B. In addition to the findings in subsection A of this section, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:
1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
  2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.13020-73.130 Exceptions. 20-73.130-Exceptions.**

- A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority if the reviewing authority makes the finding that:
1. Denial of the facility as proposed would violate federal law, state law, or both; or
  2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.
- B. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the City has deemed an application complete shall be treated as a new application.
- C. Notwithstanding any other provision of this chapter, a conditional use permit shall be required for a facility when an exception is requested.
- D. The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The City shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.14020-73.140 Wireless telecommunications facilities covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.20-73.140 Wireless telecommunications facilities covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.**

- A. **Purpose.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. Section 1455(a), generally requires that state and local

governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential “deemed granted” remedy when the state or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. Section 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. A separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the City’s land-use authority to the maximum extent possible.

**B. Applicability.** This section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).

**C. Approval Required.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a Section 6409(a) approval shall be subject to the [City Manager Zoning Administrator](#)’s approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this chapter.

**D. Other Regulatory Approvals.** No collocation or modification approved under any Section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any Section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.

**E. Application Requirement.** The City shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this section and any other written rules the City or the [City Manager Zoning Administrator](#) may establish from time to time. An application must include the information required by Section [11.14.05020.73.050](#) and the following additional information:

1. A title report prepared within the six months prior to the application filing date in order for the City verify the property owner’s identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. Section 1.40001 et seq., require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not

factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include: (a) whether and why the support structure qualifies as an existing tower or existing base station; and (b) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

**F. Procedures for a Duly Filed Application.** The City shall not review any application unless duly filed in accordance with this section, as follows:

1. **Pre-Submittal Conference.** Before application submittal, applicants must schedule and attend a pre-application meeting with the [City Manager Zoning Administrator](#) for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments 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 about whether such applications or other materials may be incomplete or unacceptable. The [City Manager Zoning Administrator](#) may, in the [City Manager Zoning Administrator](#)'s discretion, grant a written exemption to the submittal appointment under Section ~~11.14.140~~ ~~20.73.140~~(F)(2) or for a specific requirement for a complete application to any applicant who: (a) schedules, attends and fully participates in any pre-submittal conference; and (b) shows to the [City Manager Zoning Administrator](#)'s satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

2. **Submittal Appointment.** All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the [City Manager Zoning Administrator](#) at a pre-submittal conference.

3. **Appointment Scheduling Procedures.** For any event in the submittal process that requires an appointment, applicants must submit a written request to the [City Manager Zoning Administrator](#). The [City Manager Zoning Administrator](#) shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The [City Manager Zoning Administrator](#) may, in the [City Manager Zoning Administrator](#)'s discretion, 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. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the [City Manager Zoning Administrator](#) to develop and publish permit application forms, checklists, informational handouts and other related materials that the [City Manager Zoning Administrator](#) finds necessary, appropriate or useful for processing requests for Section 6409(a) approvals. Without further authorization from the City Council, the [City Manager Zoning Administrator](#) may, from time to time, update and alter any such permit application forms, checklists, informational handouts and other related materials as the [City Manager Zoning Administrator](#) deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. The City Council authorizes the [City Manager Zoning Administrator](#) to establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as the [City Manager Zoning Administrator](#) deems necessary or appropriate to organize, document and manage the application intake process.

**G. Administrative Review—Decision Notices.** The [City Manager Zoning Administrator](#) shall administratively review an application for a Section 6409(a) approval and act on such an application without prior notice or a public hearing. Within five working days after the [City Manager Zoning Administrator](#) conditionally approves or denies an application submitted for Section 6409(a) approval or before the FCC timeframe for review expires (whichever occurs first), the [City Manager Zoning Administrator](#) shall send a written notice to the applicant. In the event that the [City Manager Zoning Administrator](#) determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the [City Manager Zoning Administrator](#) will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.

**H. Required Findings for 6409(a) Approval.** The [City Manager Zoning Administrator](#) may approve or conditionally approve an application submitted for Section 6409(a) approval when the [City Manager Zoning Administrator](#) 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.

**I. Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the [City Manager Zoning Administrator](#) may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:

1. Does not satisfy the criteria for approval;
2. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
3. Involves the replacement of the entire support structure.

J. **Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the City's authority to conditionally approve an application for a Section 6409(a) approval to protect and promote the public health, safety and welfare.

K. **Appeals.** Notwithstanding any provision of the ~~Mill Valley~~Los Altos Municipal Code to the contrary an applicant may appeal a decision by the ~~City Manager~~Zoning Administrator to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the ~~City Manager~~Zoning Administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the ~~City Manager~~Zoning Administrator taken pursuant to this section. The City shall provide notice for an administrative hearing by the City Manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in subsections H and I of this section. The decision of the City Manager shall be final and not subject to any further administrative appeals.

L. **Standard Conditions of Approval.** In addition to all other conditions adopted by the ~~City Manager~~Zoning Administrator, all Section 6409(a) approvals, whether approved by the ~~City Manager~~Zoning Administrator or deemed approved by the operation of law, shall be automatically subject to the following conditions in this section; provided, however, that the ~~City Manager~~Zoning Administrator shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:

1. **Approved Plans.** Before the permittee submits any application for a building permit or other permits required by the ~~Mill Valley~~Los Altos Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "approved plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. **Permit Term.** The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a Section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
3. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) approvals or the ~~City Manager~~Zoning Administrator 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 ~~City Manager~~Zoning Administrator may not grant a



permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) approval when it has submitted an application for a conditional use permit for those improvements before the one-year period ends.

4. No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.

5. Build-Out Period. The Section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The [City Manager Zoning Administrator](#) may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the Planning Commission.

6. Maintenance Obligations—Vandalism. The permittee shall keep the site, which includes, without limitation, any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in this Section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

7. Compliance with Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409(a) approval. 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.

8. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at 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 on any day and at any time prohibited under the [Mill Valley Los Altos](#) Municipal 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. The [City Manager Zoning Administrator](#) may issue a stop work order for any work that violates this condition.

9. Noise Complaints. The permittee shall conduct all activities on the site in compliance with the noise standards in the [Mill Valley Los Altos](#) Municipal Code. In the event that any person files a noise complaint and the City verifies that such complaint is valid, the permittee

must remedy the violation within 10 days after notice from the City, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.

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

11. Contact Information. The permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes, without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.

12. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers 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 its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this Section 6409(a) approval; and (b) other claims 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 Section 6409(a) approval or the wireless facility. In the event the City becomes aware any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this Section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409(a) approval.

13. Performance Bond. Before the City issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the City Manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities 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. In establishing or adjusting the bond amount required under this condition,

and in accordance with California [Government Code](#) Section 65964(a), the City Manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

14. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes, without limitation, this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

15. **Compliance Obligations.** An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the [Mill Valley-Los Altos Municipal Code](#), any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee. ~~(Ord. 1304 § 1, September 6, 2018)~~

**~~Section 11.14.15020.73.150 Wireless telecommunications collocation facilities covered under California Government Code Section 65850.6.20.73.150~~ Wireless telecommunications collocation facilities covered under California Government Code Section 65850.6.**

A. **Purpose.** The purpose of this section is to comply with an application for a wireless telecommunications collocation facility under California [Government Code](#) Section 65850.6, for which a Section 6509(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California [Government Code](#) Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.

B. **Definitions.** For the purposes of this section, the following terms are defined as follows:

1. “Collocation facility” means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.
2. “Wireless telecommunications facility” means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.
3. “Wireless telecommunications collocation facility” means a wireless telecommunications facility that includes collocation facilities.

C. **Procedures.** An application for a wireless telecommunications collocation facility under California [Government Code](#) Section 65850.6 shall be processed in the same manner as an application for Section 6409(a) approval is processed, except that where the process requires justification for the Section 6409(a) approval, the applicant shall instead provide the justification for a wireless telecommunications collocation facility under California [Government Code](#) Section 65850.6.

**D. Requirements.** All requirements, regulations, and standards set forth in this chapter for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:

1. The applicant for a wireless telecommunications collocation facility permit shall describe or depict:
  - a. The wireless telecommunications collocation facility as it will be initially built; and
  - b. All collocations at full build-out, including, but not limited to, all antennas, antenna support structures, and accessory equipment.
2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.
3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.

**E. Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use only if all of the following requirements are satisfied:

1. The wireless telecommunications collocation facility:
  - a. Was approved after January 1, 2007, by discretionary permit;
  - b. Was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and
  - c. Otherwise complies with the requirements of California [Government Code](#) Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this chapter and the conditions of approval in the wireless telecommunications collocation facility permit.
2. The collocations were specifically considered when the relevant environmental document was prepared for the wireless telecommunications collocation facility.
3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permits, as required pursuant to the [Mill Valley Los Altos](#) Municipal Code.

**F. New or Amended Permit.** Except as otherwise provided above, approval of a new or amended permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:

1. Increases the height of the existing permitted telecommunications tower or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or
2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

G. **Appeals.** Notwithstanding any provision of the ~~Mill Valley~~Los Altos Municipal Code to the contrary, ~~including, but not limited to, Section 20.62.060,~~ any applicant may appeal a decision by the ~~City Manager~~Zoning Administrator. The appeal must be filed within 150 days from the ~~City Manager~~Zoning Administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City ~~Manager~~Council shall serve as the appellate authority for all appeals of all actions of the ~~City Manager~~Zoning Administrator taken pursuant to this section. The City shall provide notice for an administrative hearing by the City ~~Manager~~Council. The City ~~Manager~~Council shall limit its review to whether the project should be approved or denied in accordance with the provisions in this section. The decision of the City ~~Manager~~Council shall be final and not subject to any further administrative appeals. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.16020.73.160 Business license.20.73.160 Business license.**

A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise required under the ~~Mill Valley~~Los Altos Municipal Code. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.170 20.73.170 Emergency deployment.20.73.170 Emergency deployment.**

In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that the ~~City Manager~~Zoning Administrator deems to constitute an emergency, the ~~City Manager~~Zoning Administrator may approve the installation and operation of a temporary wireless telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such reasonable conditions that the ~~City Manager~~Zoning Administrator deems necessary. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.18020.73.180 Operation and maintenance standards.20.73.180 Operation and maintenance standards.**

A. All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
2. After permittee, owner, operator, or any designated maintenance agent receives notification from a resident or the ~~City Manager~~Zoning Administrator.

B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. General dirt and grease;
2. Chipped, faded, peeling, and cracked paint;
3. Rust and corrosion;
4. Cracks, dents, and discoloration;
5. Missing, discolored, or damaged artificial foliage or other camouflage;
6. Graffiti, bills, stickers, advertisements, litter and debris;
7. Broken and misshapen structural parts; and

8. Any damage from any cause.
- C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in 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. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the [City Manager Zoning Administrator](#).
- D. 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.
- E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.
- F. Each facility shall be operated and maintained to comply at all times with the noise regulations of this chapter and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the [City Manager Zoning Administrator](#). Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
- G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
- H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval. ~~(Ord. 1304 § 1, September 6, 2018)~~

**~~Section 11.14.19020-73.190 No dangerous conditions or obstructions allowed.20-73-190~~**  
**No dangerous conditions or obstructions allowed.**

No person shall install, use or maintain any wireless telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, 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 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. ~~(Ord. 1304 § 1, September 6, 2018)~~

**~~Section 11.14.20020-73.200 Permit expiration.20-73-200~~**      **Permit expiration.**

- A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the Planning Commission authorizes a longer period or pursuant to another provision of the [Mill Valley Los Altos](#) Municipal Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of no more than 10 years and no sooner than 12 months prior to expiration of the permit.

C. If a permit has not expired at the time an application is made for an extension, the [City Manager Zoning Administrator](#) may administratively extend the term of the permit for subsequent 10-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of the [Mill Valley Los Altos](#) Municipal Code that are in effect at the time the permit extension is granted.

1. At the [City Manager Zoning Administrator](#)'s discretion, additional studies and information may be required of the applicant.
2. If the [City Manager Zoning Administrator](#) determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the [Mill Valley Los Altos](#) Municipal Code that are then in effect at the time of permit expiration, the [City Manager Zoning Administrator](#) shall refer the extension request to the Planning Commission.

D. The request for an extension shall be decided by the Planning Commission if the permit expired before the application is made for an extension or if the [City Manager Zoning Administrator](#) refers the matter to the Planning Commission. After notice and a public hearing, the Planning Commission may approve, conditionally approve, or deny the extension. ~~(Ord. 1304 § 1, September 6, 2018)~~

**Section 11.14.21020-73.210 Cessation of use or abandonment. 20.73.210 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. 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 in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 10 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the [City Manager Zoning Administrator](#) of any discontinuation of operations of 30 days or more.

C. Failure to inform the [City Manager Zoning Administrator](#) 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:

1. Prosecution;
2. Revocation or modification of the permit;
3. Calling of any bond or other assurance required by this chapter or conditions of approval of the permit;
4. Removal of the facilities by the City in accordance with the procedures established under the [Los Altos Mill Valley](#) Municipal Code for abatement of a public nuisance at the owner's expense; and
5. Any other remedies permitted under the [Mill Valley Los Altos](#) Municipal Code. ~~(Ord. 1304 § 1, September 6, 2018)~~



~~Section 11.14.22020-73.220 Removal and restoration, permit expiration, revocation or abandonment.20-73.220~~ Removal and restoration, permit expiration, revocation or abandonment.

A. **Permittee's Removal Obligation.** Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition 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. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

B. **Failure to Remove.** Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 30 days after expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the [Mill Valley Los Altos](#) Municipal Code, and be grounds for:

1. Prosecution;
2. Calling of any bond or other assurance required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the City in accordance with the procedures established under the [Mill Valley Los Altos](#) Municipal Code for abatement of a public nuisance at the owner's expense; or
4. Any other remedies permitted under the [Mill Valley Los Altos](#) Municipal Code.

C. **Summary Removal.** In the event the ~~City Manager~~[Zoning Administrator](#) 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"), the ~~City Manager~~[Zoning Administrator](#) may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the 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 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 the [Mill Valley Los Altos](#) Municipal Code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee nor the 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 removed by the City due to exigent circumstances. ~~(Ord. 1304 § 1, September 6, 2018)~~



**Section 11.14.23020.73.230 Effect on other ordinances.20.73.230- Effect on other ordinances.**

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the [Mill ValleyLos Altos](#) Municipal Code, including, but not limited to, obtaining any necessary encroachment or building permits. In the event of a conflict between any provision of this chapter and other provisions of the [Mill ValleyLos Altos](#) Municipal Code, this chapter shall control. (~~Ord. 1304 § 1, September 6, 2018~~)

**Section 11.14.24020.73.240 Effect of state or federal law.20.73.240- Effect of state or federal law.**

In the event that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, the permits required by this chapter for those facilities shall be deemed to be ministerial permits. For those facilities, in lieu of a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility and all provisions of this chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the [City ManagerZoning Administrator](#) rather than as a discretionary permit. Any conditions of approval set forth in this chapter or deemed necessary by the [City ManagerZoning Administrator](#) shall be imposed and administered as reasonable time, place and manner rules. (~~Ord. 1304 § 1, September 6, 2018~~)