

**ORDINANCE NO. 29-18 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
AMENDING RICHMOND MUNICIPAL CODE ARTICLE 15.04.614 –  
WIRELESS COMMUNICATIONS FACILITIES**

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**WHEREAS**, pursuant to Article XI, section 7 of the California Constitution and sections 36931 et seq. of the California Government Code, the City may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, on November 15, 2016, the City Council adopted the Zoning and Subdivision regulations which were updated under comprehensive review and revision in order to ensure that such regulations are consistent with the General Plan and state and federal laws; and

**WHEREAS**, for the past two years, planning staff has kept a record of minor amendments needed for General Plan consistency, correction of technical and grammatical errors, and to eliminate duplication or conflicts; staff has also analyzed major amendments for state and federal law consistency, and to clarify requirements for the installation, operation and maintenance of wireless communications facilities within the City's jurisdiction; and

**WHEREAS**, on November 1, 2018, the Planning Commission held a duly and properly noticed public hearing to consider a recommendation to the City Council on the amendments to Article 15.04.614 – Wireless Communications Facilities, incorporated herein by reference; and

**WHEREAS**, the Planning Commission considered the agenda report, all public comments, and the amendments to Article 15.04.614, as set forth in Exhibit A and voted to recommend adoption of the amendments to the City Council; and

**WHEREAS**, on December 4, 2018, the City Council held a duly and properly noticed public hearing to consider introducing an Ordinance amending Article 15.04.614 – Wireless Communications Facilities of the Richmond Municipal Code, and

**WHEREAS**, the City Council considered the agenda report, all public comments, and the amendments to Article 15.04.614, as set forth in this Ordinance and the applicable provisions of the Richmond Municipal Code (“the Record”); and

**WHEREAS**, the City Council finds and determines:

1) Pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the amendments to Article 15.04.614 are not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and

2) Even if the amendments to Article 15.04.614 qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The proposed ordinance merely amends the Richmond Municipal Code to regulate the future deployment of wireless communications facilities and does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless communication facility or change to an existing facility would be subject to additional environmental review on a case-by-case basis; and

3) The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the agenda report, other written reports, public testimony and other information

contained in the Record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance; and

4) The amendments to Article 15.04.614 are consistent with the General Plan, Richmond Municipal Code, and applicable federal and state law; and

5) The amendments to Article 15.04.614 will not be detrimental to the public interest, health, safety, convenience or welfare.

**SECTION I. Municipal Code Amendments.**

**The City Council of the City of Richmond does ordain as follows:**

Article 15.04.614 of the City of Richmond Municipal Code is hereby amended as shown in Exhibit A (~~strikeout text indicates deletion~~; underline text indicates insertion), incorporated herein by reference.

**SECTION II. Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

**SECTION III. Effective Date.**

All applications filed after or pending upon the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

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First introduced at a regular meeting of the City Council of the City of Richmond held December 4, 2018, and finally passed and adopted at a regular meeting held December 18, 2018, by the following vote:

AYES: Councilmembers Beckles, Choi, Martinez, Myrick, Recinos, Vice Mayor Willis, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

**PAMELA CHRISTIAN**  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:  
**TOM BUTT**  
Mayor

Approved as to form:  
**BRUCE GOODMILLER**  
City Attorney

State of California                    }  
County of Contra Costa            }           : ss.  
City of Richmond                    }

I certify that the foregoing is a true copy of **Ordinance No. 29-18 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 18, 2018.



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Pamela Christian, City Clerk of the City of Richmond

Attachment: Exhibit A – Wireless Ordinance Amendments

## Article 15.04.614 Wireless Communications Facilities

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### Sections:

15.04.614.010	Purpose
15.04.614.020	Applicability
15.04.614.030	Required Permits and Approvals
15.04.614.040	Applications
15.04.614.050	Development Standards
15.04.614.060	Notice; Decisions; Appeals
15.04.614.070	Standard Conditions of Approval
15.04.614.080	Permit Revocation; Discontinued Uses; Facility Removal
15.04.614.090	Limited Exceptions; Variances
15.04.614.100	Special Provisions for Section 6409 Approvals
15.04.614.110	Compliance Obligations

### 15.04.614.010 Purpose

- A. This Article is intended to reasonably regulate, to the extent permitted under California and federal law, the installation, operation, collocation, modification, maintenance and removal of wireless communication facilities in a manner that promotes and protects public health, safety and welfare, and balances the benefits that flow from robust and ubiquitous wireless services with the local values and aesthetic character of the City, its neighborhoods and other districts.
- B. This Article is not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) unreasonably discriminate among providers of functionally equivalent personal wireless services; (3) regulate the installation, operation, collocation, modification, maintenance or removal of personal wireless services based on environmental effects from radio frequency emissions to the extent such emissions comply with all applicable Federal Communications Commission (FCC) regulations; (4) create barriers that prohibit or effectively prohibit any telecommunications service provider's ability to provide any interstate or intrastate telecommunications service; (5) prohibit or effectively prohibit any collocation or modification that the City may not deny under applicable California or federal law; or (6) preempt any applicable California or federal laws, regulations or other mandatory rules.

### 15.04.614.020 Applicability

- A. **Applicable Facilities.** This Article applies to all applications to install, construct, collocate, modify or otherwise alter wireless communication facilities in the City of Richmond.
- B. **Legal Nonconforming Facilities.** Any existing facility within the City's jurisdictional boundaries that does not conform to the requirements in this Article is

deemed a “legal nonconforming use” as defined in Article 15.04.104 and subject to the provisions in Article 15.04.606.

C. **Exempted Facilities.** Notwithstanding subsection ~~15.04.614.020A~~~~15.04.614.020(A)~~, this Article does not apply to the following:

1. amateur radio antennas;
2. Over-the-air-reception devices (OTARD antennas);
3. wireless antennas and related equipment installed completely indoors and intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system);
4. antennas and related equipment owned and operated by California Public Utilities Commission (CPUC)-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities covered under CPUC General Order 131-D, as may be amended or superseded; ~~and~~
5. City-owned and operated facilities for public purposes; and
- ~~5-6. wireless antennas and related equipment installed in the public rights-of-way on City-owned or controlled support structures under a valid lease or license agreement with the City.~~

D. **Special Provisions for Section 6409 Approvals.** Any application submitted with a written request for approval pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)) shall be subject to the provisions in Section ~~15.04.614.100~~~~15.04.614.100~~ and exempt from the other provisions in this Article.

~~E. **Special Provisions for Small Wireless Facilities.** Notwithstanding any provision in this Article, including any exemption under section 15.04.614.020(C), all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit as specified in a policy adopted for small wireless facilities by City Council resolution. All small wireless facilities shall comply with the City Council policy. If the policy is repealed, an application for a small wireless facility shall be processed pursuant to this Article.~~

### 15.04.614.030 Required Permits and Approvals

A. **Conditional Use Permit.** A conditional use permit, subject to the Planning Commission’s review and approval and in accordance with Article 15.04.806 (Use Permits), is required for any new facilities and collocations or modifications to existing facilities as follows:

1. all unconcealed wireless facilities on private property;
2. any wireless facility that requires a limited exception pursuant to Section ~~15.04.614.090~~~~15.04.614.090~~;
3. all wireless facilities on private property in locations listed in paragraphs 15.04.614.050(A)(3) through (A)(~~8~~7); and

4. all other wireless facilities that do not meet the criteria for an administrative use permit.
- B. **Administrative Use Permit.** An administrative use permit, subject to the Zoning Administrator's review and approval and in accordance with Article 15.04.806 (Use Permits), is required for any new facilities and collocations or modifications to existing facilities as follows:
1. all concealed facilities in locations listed in paragraphs 15.04.614.050(A)(1) and (A)(2) without the need for a limited ~~exemption~~exception pursuant to Section ~~15.04.614.090~~15.04.614.090; and
  2. all ~~concealed~~ wireless facilities in the public rights-of-way ~~approvable without the need for a limited pursuant to Section 15.04.614.090, unless exempted under this Article.~~
- C. **Design Review.** All projects subject to a conditional use permit or an administrative use permit must also obtain design review and approval, in accordance with Article 15.04.805 (Design Review). The Design Review Board shall conduct major design review for facilities subject to a conditional use permit. The Zoning Administrator shall conduct minor design review for facilities subject to an administrative use permit.
- D. **Other Regulatory Permits or Approvals.** In addition to any conditional use permit or administrative use permit required under this Article, the applicant must obtain all other required prior permits and other regulatory approvals from other City departments, and state and federal agencies. Any conditional use permit or administrative use permit granted under this Article will be subject to the conditions and/or other requirements in any other required prior permits or other regulatory approvals from other City departments, and state and federal agencies.

#### 15.04.614.040 Applications

- A. **Application Required; Applicability.** The City shall not grant any application for any permit under this Article except upon a duly filed application consistent with the provisions in Article 15.04.803 (Common Procedures), this section and any written rules or regulations the Director may publish in any publicly stated format. In the event that any conflict arises between the requirements in Article 15.04.803 and this Section 15.04.614.040, the requirements in this section shall govern. Applications for collocations or modifications submitted for approval pursuant to Section 6409 are governed under Section 15.04.614.100.
- B. **Application Content.** All applications for an administrative use permit or conditional use permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop and publish ~~permit application forms, checklists, informational handouts and other related materials for this Article. Without further authorization from the City Council, the Director may~~ from time-to-time update ~~and alter the or amend~~ permit application requirements, forms, checklists, guidelines, informational handouts and other related materials as the Director deems necessary ~~or, appropriate~~ or useful for processing any application governed under this Article, and/or to respond to regulatory, technological or other changes related to this Article. ~~The materials~~

~~required under this section are minimum requirements for any application the Director may develop. The Director shall provide notice to the public, Planning Commission and City Council when such updates or amendments occur.~~

- ~~1. ***Application Fee.*** Applicants must tender to the City the fee required in the City's Master Fee Schedule, as set and to be paid in accordance with subsection 15.04.803.020(C). In the event that the City's Master Fee Schedule does not contain a specific fee for wireless applications, the highest fee applicable to conditional use permits will be required.~~
- ~~2. ***Owner's Authorization.*** Applicants must submit evidence sufficient to show that either (1) the applicant owns the project site or (2) the applicant has obtained the owner's authorization to file the application.~~
- ~~3. ***Regulatory Authorization.*** To the extent that the applicant claims any regulatory authorization or other right to use the public rights-of-way, the applicant must provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim.~~
- ~~4. ***Project Plans.*** A fully dimensioned site plan and elevation drawings prepared and sealed by a California licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements; the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements. The plans must contain all other elements and details required for site plans submitted with a conditional use permit or administrative use permit.~~
- ~~5. ***Site Photographs and Photo Simulations.*** Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.~~
- ~~6. ***Radio Frequency (RF) Exposure Compliance Demonstration.*** An RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.~~

- ~~7. **Project Purpose Statement.** A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.~~
- ~~8. **Alternative Sites Analysis.** The applicant must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this Article as the proposed location and design. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this Article as the proposed location. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of such wireless communication facility is not a viable option.~~

C. **Submittal and Review Procedures.**

1. **Pre-application Conferences.** Prior to application submittal, applicants must schedule and attend a pre-application conference with City staff for all proposed facilities that require a conditional use permit. The City strongly encourages but does not require a pre-application conference for all other proposed facilities. Such pre-application conference is intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project may qualify for approval pursuant to Section 6409(a); potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. Applicant's may but shall not be required to bring any particular materials to a pre-application conference. City staff will endeavor to provide applicants with an appointment within approximately five business days after receipt of a written or email request. For any applicant that schedules, attends and fully participates in a pre-application conference, the Zoning Administrator may grant a written exemption from a specific application requirement or requirements when the applicant shows that the information requested is duplicative of information contained in other materials to be submitted with the application or otherwise unnecessary for the City's review under the facts and circumstances in that particular case. Any such written waiver shall be limited to the project discussed at the pre-application conference and shall not extend to any other projects.



2. ***Submittal Appointments.*** Applicants must submit an application at a pre-scheduled appointment. Applicants may generally submit only one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. City staff will endeavor to provide applicants with an appointment within five business days after staff receives a written request for an appointment. Any applications received without an appointment, whether delivered in-person or any other means, shall not be considered duly filed unless the applicant received a written exemption at a pre-submittal conference. The Zoning Administrator will begin to review the application once it is duly filed.
3. ***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 Zoning Administrator may, in the Zoning Administrator's sole 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.
4. ***Authorization to Develop Departmental Rules.*** The City Council authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice. In addition, the Director shall make publicly available an inventory of small wireless facilities that shows the location of each such facility deployed within the City and categorized by neighborhood.

D. **Independent Consultants.**

1. ***Authorization.*** The City Council authorizes the Zoning Administrator to, in the Zoning Administrator's discretion, and at any time in the review process, select and retain an independent consultant with qualifications and expertise satisfactory to the Zoning Administrator.
2. ***Scope.*** The Zoning Administrator may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:
  - a. permit application completeness or accuracy;
  - b. planned compliance with applicable RF exposure standards;
  - c. whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;

- d. whether technically feasible and potentially available alternative locations and designs exist;
- e. the applicability, reliability and sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
- f. any other issue that requires expert or specialized knowledge identified by the Zoning Administrator.

~~3. **Notice to the Applicant.** The Zoning Administrator shall send written notice to the applicant when it elects to retain an independent consultant. The applicant shall have two (2) business days to withdraw the application without any liability for any costs or expenses in connection with the independent consultant's review.~~

~~4.3.~~ **Deposit; Invoices.** The applicant must pay for the cost and expense in connection with the independent consultant's review and participation in any meeting. Before the City incurs any costs or expenses, the Zoning Administrator shall require the applicant to tender a reasonable deposit, at the Zoning Administrator's sole discretion. In the event that the deposit is insufficient to cover all costs and expenses, the Zoning Administrator may either (a) require an additional deposit or (b) invoice the applicant. Any required deposit or invoice must be paid in full within 10 days. The City shall not issue any permit to an applicant who has not paid any applicable fee, deposit or invoice as required in this Code.

#### 15.04.614.050 Development Standards

A. **Preferred Locations.** All applicants must, to the extent feasible, propose new facilities in locations according to the following preferences, ordered from most preferred to least preferred:

- 1. City-owned parcels in any zoning district;
- 2. IB, ILL, IL, IG, and IW zoning districts;
- ~~3. PCI zoning district;~~
- ~~4. PR zoning district;~~
- ~~5.3.~~ CG, CR, and CC zoning districts;
- ~~4.~~ CM-1, CM-2, CM-3, CM-4, CM-5, and LW zoning districts;
- ~~6.5.~~ PCI, PR, OS and AG zoning districts;
- ~~7.6.~~ Planned Area districts; and
- ~~8.7.~~ RH, RL1, RL2, RM-1, and RM-~~3~~2 zoning districts.

B. **Preferred Support Structures.** In addition to the preferred districts described in subsection ~~15.04.614.050A~~15.04.614.050(A) above, the City also expresses its preference for certain support structures within those districts as follows, ordered from most preferred to least preferred:

- 1. collocations with existing building-mounted wireless facilities;

2. collocations with existing wireless facilities on electric transmission towers;
3. installations on existing buildings or rooftops;
4. installations on existing wireless towers;
5. installations on existing electric transmission towers;
6. new freestanding wireless towers.

Note: As a hypothetical example, and not a limitation, in an industrial district where an applicant could achieve its technical objective equally well with antennas mounted on either an electric transmission tower (that does not currently support any wireless facilities) or a new freestanding wireless tower, the applicant must mount the antennas on the electric transmission tower in accordance with the City's preference.

C. **General Development Standards.** All new wireless facilities and collocations or modifications not subject to a Section 6409 Request must conform to all the standards in this section.

1. **Concealment.** Wireless facilities must incorporate concealment measures sufficient to render the facility either camouflaged or stealth, as appropriate for the proposed location and design. All facilities must be designed to visually blend into the surrounding area in a manner compatible with the uses germane to the underlying zoning district and consistent with the existing uses in the immediate vicinity of the project site.
2. **Future Collocations.** All wireless facilities must be designed and sited in a manner that contemplates future collocations, and will allow additional equipment to be integrated into the proposed facility with no or negligible visible changes to its outward appearance to the greatest extent feasible.
3. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, including without limitation the California Building Standards Code, General Plan and any specific plan, the Richmond Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
4. **Overall Height.** Wireless facilities must not exceed the applicable height limit for structures in the applicable zoning district.
5. **Setbacks.** Wireless facilities may not encroach into any applicable setback for structures in the applicable zoning district.
6. **Noise.** A wireless facility and all equipment associated with a wireless facility must not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located, including without limitation the provisions in Article 15.04.608 (Performance Standards) and Article 15.04.605 (Noise). The Approval Authority may require the applicant to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the Approval

Authority deems necessary or appropriate to ensure compliance with the applicable ambient noise limit.

7. **Lights.** Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to comply with Article 15.04.604 (Lighting and Illumination) and avoid illumination impacts to adjacent properties to the maximum extent feasible. The Approval Authority may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.
8. **Signs.** No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
9. **Fences, Enclosures and Security.** Any fencing or enclosures proposed in connection with a wireless facility must comply with Section [15.04.614.060 \(Fences and Walls\)](#) and blend with the natural and/or man-made surroundings, subject to the City's review and approval. The Approval Authority may require additional landscape features to screen fences. The Approval Authority shall not approve barbed wire, razor ribbon, electrified fences or any similar measures to secure a wireless facility, except when the applicant demonstrates that the need for such measures significantly outweighs the potential danger to the public and as provided in Chapter 11.88 of the Richmond Municipal Code. For proposed towers without any fence or enclosure, the applicant must incorporate anti-climbing measures, such as a ladder guard or removable ladder rungs, to prevent unauthorized access, vandalism and other attractive nuisances.
10. **Landscape Features.** Landscaping may be required to be installed and maintained by Applicant to visually screen facilities from adjacent properties or public view or to provide a backdrop to camouflage the facilities. All proposed landscaping is subject to Approval Authority review and approval. Landscaping must comply with Article 15.04.613 (Water-Efficient Landscaping). To the extent that Article 15.04.613 is inapplicable to the landscaping described in this subsection, landscaping must still comply with the methods for achieving water efficiency, contained in the General Landscaping Standards in Section [15.04.613.040](#).
11. **Utilities.** All cables and connectors for telephone, primary electric and other similar utility services must be routed underground to the extent feasible in conduits large enough to accommodate future collocated facilities. The Approval Authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

D. **Freestanding Towers.**

1. ***Tower-mounted Equipment.*** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat colors subject to the Approval Authority's prior approval.
2. ***Ground-mounted Equipment.*** All ground-mounted equipment must be concealed within an existing or new structure, opaque fences or other enclosures subject to the Approval Authority's approval. The Approval Authority may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
3. ***Faux Tree Standards.*** The Approval Authority may approve a new freestanding wireless facility camouflaged as a faux tree only when it blends with the mature, natural trees in proximity to the proposed project site. The Approval Authority may require the applicant to plant and maintain new, natural trees around the project site when necessary or appropriate to adequately conceal the proposed faux-tree wireless facility.

E. **Building-Mounted Facilities.**

1. ***Preferred Concealment Techniques.*** All applicants should, to the extent feasible, propose new non-tower facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks).
2. ***Facade-mounted Equipment.*** All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The Approval Authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial zones, the Approval Authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.
3. ***Rooftop-mounted Equipment.*** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The Approval Authority may approve unscreened rooftop equipment only when

it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.

4. ***Ground-mounted Equipment.*** Outdoor ground-mounted equipment associated with building-mounted facilities must be avoided whenever feasible. In publicly visible or accessible locations, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) such as dumpster corrals and other accessory structures.

F. **Facilities in the Public Rights-of-Way.**

1. ***General Prohibition.*** Facilities in the rights-of-way shall not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.
2. ***Concealment.*** All facilities in the rights-of-way must be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.
3. ***Undergrounded Equipment.*** To conceal the non-antenna equipment, applicants for a proposed facility within any area in which the existing utilities are primarily located underground shall underground all non-antenna equipment other than any required electric meter or disconnect switch. In all other areas, applicants shall install all non-antenna equipment underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.
4. ***Ground-mounted Equipment.*** To the extent that the equipment cannot be placed underground as required, applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The City may require landscaping as a condition of approval to conceal ground-mounted equipment.
5. ***Pole-mounted Equipment.*** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
6. ***Support Structures.*** If an applicant proposes a new facility in the public rights-of-way, then the applicant must use existing above-ground structures, such as streetlights or traffic signals. If no such existing above-ground structures exist or are otherwise not available to the applicant, then the Approval Authority may require the applicant to install a decorative or

integrated pole specifically designed to conceal wireless transmission equipment.

7. **Utility Lines.** When the point of contact is not on the pole itself, service lines must be undergrounded whenever feasible to avoid additional overhead lines. The Approval Authority shall not approve new overhead service lines merely because compliance with the undergrounding requirements would increase the project cost. For metal poles, undergrounded cables and wires must transition directly into the pole base without any external doghouse.
8. **Electric Meter.** Multiple operators on a shared pole must share a single electric meter. Site operators must use the smallest and least intrusive electric meter available. In the event that a smaller or less intrusive meter becomes available after the site operator installs its equipment, the site operator must remove the current meter and install the new one within a reasonable time. The City strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. The electric meter or its case must be painted to match the pole unless painting is expressly not permitted by the electric service provider.
9. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables must not be spooled, coiled or otherwise stored on the pole whether in a cabinet or not.
10. **Finishes.** No above-ground or pole-mounted equipment in the rights-of-way may be finished with reflective materials unless approved by the Approval Authority.

#### 15.04.614.060 Notice; Decisions; Appeals

##### A. Public Notice.

1. **Public Hearings.** Public notice is required for all applications that either (i) may have a substantial or significant impact on a real property interest of a third party, or (ii) require a public hearing before the City Council, Planning Commission, Design Review Board or the Zoning Administrator in accordance with Section 15.04.803.060~~080~~ (Conduct of Public Hearings).
2. **Deemed-Approved Notice.** No more than 30 days before the applicable timeframe for review expires 90 days for collocations and 150 days for all other applications), the applicant must provide written notice to all persons entitled to notice in accordance with Section 15.04.803.060, as modified in this subsection ~~15.04.614.060A~~15.04.614.060A060(A).
  - a. **Required Disclosure.** The notice must contain the following statement: “California Government Code section 65964.1 may deem the application approved in 30 days unless the City approves or disapproves the application, or the City and applicant reach a mutual tolling agreement.”
  - b. **Notice to the City.** In addition to all persons entitled to notice in accordance with Section 15.04.803.060, the applicant must deliver written notice to the Department, which contains the same statement

required in subsection A.2.a, above, and a mailing list for public notices sent out under this subsection A.2. The applicant may tender such notice in person or certified United States mail.

- B. **Required Findings.** The Approval Authority may approve or conditionally approve an application for a conditional use permit or an administrative use permit only when the Approval Authority finds:
1. the proposed facility complies with all criteria for a conditional use permit or an administrative use permit in accordance with Article 15.04.806 (Use Permits) and, if applicable, with the criteria for design review approval in accordance with Article 15.04.805 (Design Review);
  2. the proposed facility complies with all applicable standards described in this Article 15.04.614; and
  3. the applicant has provided a meaningful comparative analysis that demonstrates all alternative designs and locations identified in the application review process are either technically infeasible or not potentially available.
- C. **Conditional Approvals.** The Approval Authority may impose reasonable conditions on an administrative use permit or conditional use permit, related and proportionate to the subject matter in the application, as the Approval Authority deems necessary or appropriate to promote and ensure conformance with the General Plan, any applicable specific plan and the provisions in this Article. As an illustration and not a limitation, the Approval Authority may impose conditions that require the applicant to install, construct or enhance concealment elements to areas outside the boundaries of the applicant's immediate leased or owned site, as long as such concealment is (i) limited to the underlying support structure; (ii) reasonably related to mitigating the impacts created by the proposed project; and (iii) reasonably necessary to maintain visual consistency among the site, the support structure and other improvements or architectural features on the support structure. In addition the Approval Authority must make an individualized finding, supported with substantial evidence, that the concealment condition is related to the proposed development in nature and scope.
- D. **Notice of Decision.** Within five days after the Approval Authority approves or denies an application for a conditional use permit or an administrative use permit, the Approval Authority shall provide written notice to the applicant, in accordance with subsection 15.04.803.080(E) (Notice of Decision). All denial notice must contain the reasons for the denial.
- E. **Appeals.**
1. **Conditional Use Permits.** Any person or entity may appeal a final decision by the Planning Commission in accordance with Section 15.04.803.130 (Appeals), except as modified in this subsection (E)(1). The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Council shall review the decision of the Planning Commission *de novo*.
  2. **Administrative Use Permits.** Any person or entity may appeal a final decision by the Zoning Administrator in accordance with Section



15.04.803.130 (Appeals), except as modified in this paragraph. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The Planning Commission shall review the decision of the Zoning Administrator *de novo*.

#### 15.04.614.070 Standard Conditions of Approval

~~All applications for a~~ In addition to all other conditions that may be adopted by the Approval Authority, all conditional use permit, permits or administrative use permit or Section 6409 Request permits, whether approved by the Approval Authority or deemed approved by the operation of law, shall be automatically subject to the standard conditions of approval provided in this section. The Approval Authority (or the appellate authority on appeal) may add, remove or modify any conditions of approval ason a case-by-case basis as may be necessary or appropriate under the circumstances to protect ~~and promote the~~ public health, ~~and~~ safety or allow for the proper operation of the approved facility consistent with the goals of this Article and welfare any other applicable provisions in the Richmond Municipal Code, the General Plan and any specific plan.

- A. **Permit Duration.** The permit will automatically expire 10 years from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.
- B. **Permit Renewal.** Any application to renew this permit must be tendered to the City between 365 days and 180 days prior to its expiration, and must be accompanied by all required application materials, fees and deposits for a new application as then in effect. The City shall review an application for permit renewal in accordance with the standards for new facilities as then in effect. The Zoning Administrator may, but is not obligated to, grant a written temporary extension on the permit term to allow sufficient time to review a timely submitted permit renewal application.
- C. **Build-out Period.** Any permit approved under this Article or by operation of law shall automatically expire one year from the approval date if the applicant fails to commence construction within that one-year period; provided, however, that the Zoning Administrator may renew any such permit for up to one additional year if the Zoning Administrator receives a written request from the permittee within 30 days prior to the expiration date, at the Zoning Administrator's sole discretion.
- D. **Compliance with Laws.** Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- E. **Permittee's Contact Information.** 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. All such contact information for responsible parties shall be provided to the Zoning Administrator within one business day after permittee receives a written request from the Zoning Administrator.
- F. **Cooperation with Access and Inspections.** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility to support, repair, disable or remove

any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

- G. **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 and conditions of approval.
- H. **Concealment Elements.** Permittee acknowledges and agrees that each and every aspect and/or element of the wireless facility, including without limitation its coloring, finishes, placement, orientation and proportionality with the structures in the immediate vicinity, that, by its sense and context, aids, contributes or otherwise furthers the concealment of the facility, in whole or in part, shall be deemed to be a concealment element of the support structure.
- I. **Graffiti Abatement.** Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole cost and expense, and in no instance more than 48 hours from the time of notification by the City or after discovery by the permittee.
- J. **Backup Generator Use.** Permittee shall not use any backup or standby power generator except (1) when necessary due to a primary power source failure or (2) for routine maintenance/cycling. Permittee shall not operate the generator for maintenance/cycling more frequently than twice per month and then only for no longer than 30 minutes at a time on Wednesdays between 10:00 am and 11:00am.
- K. **Indemnification.** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed 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 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.
- L. **Adverse Impacts.** Permittee shall take 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.
- M. **Building Permit Application Plans.** In addition to the information required by Section 6.02.160 of the RMC, the permittee must incorporate into building plans and

submit with any application to the Building Department, three copies of each of the following: (1) the conditional use permit, administrative use permit, and/or design review approval associated with the facility, including without limitation all findings and conditions of approval; and (2) the photo simulations, as required for the application and accurately representing the approved facility as may be modified by any conditions of approval, associated with the conditional use permit, administrative use permit, and/or design review approval associated with the facility. The Building Official is not authorized to waive any of these specific submittal requirements irrespective of the exception authority granted by Section 6.02.160.

N. **Record Retention.** The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans and specifications, resolutions and other documentation associated with the permit or regulatory approval. In the event that neither the City nor the permittee can locate any permit or other regulatory approval that would have been required for the equipment deployed or installed in connection with the facility, the permittee acknowledges that the City will presume that any such equipment was deployed or installed without proper review and approval.

O. **Joint and Several Liability.** The permittee and the property owner shall be jointly and severally liable for compliance with all conditions of approval adopted under this permit, which includes without limitation compliance with any maintenance and concealment conditions.

#### **15.04.614.080 Permit Revocation; Discontinued Uses; Facility Removal**

A. **Permit Revocation.** Any permit issued under this Article, including any permit deemed granted or deemed approved by operation of law, may be revoked in accordance with the provisions in Section 15.04.803.120 (Revocation).

B. **Discontinued Uses.**

1. ***Discontinued by Application.*** Any permittee that intends to decommission a wireless facility must send 30-days' prior written notice by United States Certified Mail to the Director. The permit will automatically expire 30 days after the Director receives such notice of intent to decommission, unless the permittee rescinds its notice within the 30-day period.

2. ***Facilities Declared Discontinued.*** To promote the public health, safety and welfare, the Director may declare a facility abandoned when: (i) the permittee notifies the Director that it abandoned the use of a facility for a continuous period of 90 days; or (ii) the permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Director that states the basis for the Director's belief that the facility has been abandoned for a continuous period of 90 days; or (iii) the permit expires and the permittee has failed to file a timely application for renewal.

a. After the Director declares a facility abandoned, the permittee shall have 90 days from the date of the declaration (or longer time as the Director may approve in writing as reasonably necessary) to: (i) reactivate the use of the abandoned facility subject to the provisions

of this Article and all conditions of approval; (ii) transfer its rights to use the facility, subject to the provisions of this Article and all conditions of approval, to another person or entity that immediately commences use of the abandoned facility; or (iii) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.

- b. If the permittee fails to act as required in paragraph 15.04.614.080(B)(2)(a) above within the prescribed time period, the City Council may deem the facility abandoned and revoke the underlying permit(s) in the manner provided in Section 15.04.803.420130 (Revocation). Further, the City Council may take any legally permissible action or combination of actions reasonably necessary to protect the public health, safety and welfare from the abandoned wireless facility.

C. **Removal and Restoration Obligations.**

1. ***Removal by Permittee.*** The permittee or property owner must completely remove the wireless facility and all related improvements within 90 days after the (1) the permit expires, (2) the City Council properly revokes a permit in accordance with Section 15.04.803.120 (Revocation), (3) the permittee discontinues the wireless facility, or (4) the City Council properly deems the wireless facility abandoned pursuant to subsection ~~15.04.614.080B~~15.04.614.080B080(B). In addition, within the 90-day period, the permittee or property owner must restore the former wireless facility site area to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
2. ***Removal by City.*** The City may, but is not obligated to, remove an abandoned wireless facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed wireless facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate in its sole discretion. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. A lien may be placed on all abandoned personal property and the real property on which the abandoned wireless facility is located for all costs incurred in connection with any removal, repair, restoration and storage performed by the City. The City Clerk shall cause such a lien to be recorded with the County of Contra Costa Recorder's Office.

## 15.04.614.090 Limited Exceptions; Variances

A. **Limited Exceptions for Personal Wireless Service Facilities.** The City Council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The City Council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited ~~exemption~~exception for proposals in which strict compliance with this Article would effectively prohibit personal wireless services serves the public interest. The City Council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the City's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this Article, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the Planning Commission, or the Zoning Administrator in the case of a wireless facility in the public rights-of-way subject to an Administrative Use Permit, may grant a limited, one-time ~~exemption~~exception from strict compliance subject to the provisions in this subsection 15.04.614.090(A).

1. **Required Findings.** The ~~Planning Commission~~Approval Authority shall not grant any ~~exemption~~exception unless the applicant demonstrates with clear and convincing evidence all the following findings:
  - a. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in U.S.C 47 § 332(c)(7)(C)(ii);
  - b. The applicant has provided the City with a clearly defined technical service objective and a clearly defined potential site search area;
  - c. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why an alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record, including by not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and
  - d. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviation is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.
2. **Scope of ~~Exemption~~Exception.** The ~~Planning Commission~~Approval Authority shall limit its ~~exemption~~exception to the extent to which the applicant demonstrates such ~~exemption~~exception is necessary to reasonably achieve its reasonable technical service objectives. The ~~Planning Commission~~Approval Authority may adopt conditions of approval as reasonably necessary to promote the purposes in this Article and protect the public health, safety and welfare.

- B. **Variations.** All other requests to relieve or waive any provision under this Article for any non-personal wireless services facility are subject to the variance procedures under Article 15.04.808.

#### 15.04.614.100 Special Provisions for Section 6409 Approvals

- A. **Applicability.** The provisions in this Section 15.04.614.100 apply only to applications for collocations and/or modifications to existing wireless towers or base stations submitted for approval pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)). Any approval under this section shall be referred to as a “Section 6409(a) Approval”.
- B. **Definitions.** The definitions in this section are applicable to Type I applications for a minor modification and are provided for easy reference. In the event that any defined term conflicts with any applicable federal law or regulation, the federal law or regulation shall control.

1. “**Base station**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as follows:

A structure or equipment at a fixed location that enables [FCC]-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in [47 C.F.R. § 1.40001(b)(9)] or any equipment associated with a tower.

- a. 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.
- b. 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).
- c. 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 paragraphs (b)(1)(i) through (ii) of this section 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.
- d. 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 paragraphs (b)(1)(i)–(ii) of this section.

Note: As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was

not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

2. “**Collocation**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”
3. “**Eligible facilities request**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”
4. “**Eligible support structure**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”
5. “**Existing**” means the same as defined by the FCC in 47 C.F.R. § 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.”
6. “**Site**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that “[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”
7. “**Substantial change**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term as a collocation or modification that:
  - a. increases the overall height more than either (i) 10 percent or the height of one additional antenna array not to exceed 20 feet (whichever is greater) for towers on private property, or (ii) 10 percent or 10 feet (whichever is greater) for towers in the public rights-of-way and base stations;

- b. increases the width more than either (i) 20 feet or the width of the tower at the level of the appurtenance (whichever is greater) for towers on private property, or (ii) 6 feet from the edge of the support structure for towers in the public rights-of-way and base stations;
- c. for towers on private property, involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four;
- d. for towers in the public rights-of-way and base stations, involves the installation of (i) any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets, or (ii) any new ground-mounted equipment cabinets that are 10 percent larger in height or volume than any existing ground-mounted equipment cabinets;
- e. for towers on private property, 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;
- f. for towers in the public rights-of-way and base stations, involves excavation or deployment of equipment outside the area in proximity to the structure and other transmission equipment already deployed on the ground;
- g. would defeat the existing concealment elements of the support structure as determined by the Approval Authority; or
- h. 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.

Note: 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) of the Middle Class Tax Relief and Job Creation Act.

- 8. “**Tower**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as



microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

9. “**Transmission equipment**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as “[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The 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.”

C. **Required Permits.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted for approval under Section 6409(a) shall require a Section 6409(a) Approval subject to the Zoning Administrator’s approval, conditional approval or denial under the standards and procedures contained in this Section 15.04.614.100. No construction in connection with any Section 6409(a) Approval may occur unless the applicant also obtains all other permits or regulatory approvals from other City departments and state or federal agencies. An applicant must obtain a Section 6409(a) Approval before it may apply for permits or other regulatory approvals from other City departments. Furthermore, any Section 6409(a) Approval granted under this Section 15.04.614.100 shall remain subject to the lawful conditions and/or requirements associated with such other permits or regulatory approvals from other City departments and state or federal agencies.

D. **Applications.**

1. **Application Required; Applicability.** The City shall not grant any application for any permit under this Section 15.04.614.100 except upon a duly filed application consistent with the provisions in this section and any written rules or regulations the Director may publish in any publicly stated format.
2. **Application Content.** All applications for a Section 6409(a) Approval must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop ~~and~~, publish ~~permit application forms, checklists, informational handouts and other related materials.~~ Without further authorization from the City Council, the ~~Director may~~ from time-to-time ~~update and alter the~~ amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials as the Director deems necessary ~~or,~~ appropriate or useful for processing requests for Section 6409(a) approvals, and/or to respond to regulatory, technological or other changes. ~~The materials required under this section are minimum requirements for any application the Director may develop. The Director shall provide notice to the public, Planning Commission and City Council when such updates or amendments occur.~~

- ~~3. *Application Fee.* Applicants must tender to the City the fee required in the City's Master Fee Schedule. In the event that the City's Master Fee Schedule does not contain a specific fee for wireless applications, the highest fee applicable to conditional use permits will be required.~~
- ~~4. *Project Plans.* A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements; the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements. The plans must specifically depict and call out the original overall height of the structure and the overall height that existed on February 22, 2012 (if the structure was constructed prior to February 22, 2012). The plans must contain all other elements and details required for site plans submitted with a conditional use permit.~~
- ~~5. *Site Photographs and Photo Simulations.* Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.~~
- ~~6. *Prior Regulatory Approvals.* Evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless services utilizing the proposed wireless facility. For any prior local regulatory approval(s) associated with the wireless facility, the applicant must submit copies of all such approvals with any corresponding conditions of approval. Alternatively, the applicant may submit a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless facility at the time it was constructed or modified.~~
- ~~7. *RF Exposure Compliance Demonstration.* An RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.~~
- ~~8. *Section 6409(a) Justification Analysis.* 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. § 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 (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.~~

9.3. ***Pre-application Conferences.*** Prior to application submittal, applicants must schedule and attend a pre-application conference with City staff. Such pre-application conference is intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project may qualify for approval pursuant to Section 6409(a); potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. Applicant's may but shall not be required to bring any particular materials to a pre-application conference. City staff will endeavor to provide applicants with an appointment within approximately five business days after receipt of a written or email request. For any applicant that schedules, attends and fully participates in a pre-application conference, the Zoning Administrator may grant a written exemption from a specific application requirement or requirements when the applicant shows that the information requested is duplicative of information contained in other materials to be submitted with the application or otherwise unnecessary for the City's review under the facts and circumstances in that particular case. Any such written waiver shall be limited to the project discussed at the pre-application conference and shall not extend to any other projects

10.4. ***Submittal Appointments.*** Applicants must submit an application at a pre-scheduled appointment. Applicants may generally submit only one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. City staff will endeavor to provide applicants with an appointment within five business days after staff receives a written request for an appointment. Any applications received without an appointment, whether delivered in-person or any other means, shall not be considered duly filed unless the applicant received a written exemption at a pre-submittal conference.

11.5. ***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 Zoning Administrator may, in the Zoning Administrator's sole 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.

12.6. ***Authorization to Develop Departmental Rules.*** The City Council authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

13.7. ***Independent Consultants.***

a. ***Authorization.*** The City Council authorizes the Zoning Administrator to, in the Zoning Administrator's discretion, and at any time in the review process, select and retain an independent consultant with qualifications and expertise satisfactory to the Zoning Administrator.

b. ***Scope.*** The Zoning Administrator may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:

- i. permit application completeness or accuracy;
- ii. planned compliance with applicable RF exposure standards;
- iii. whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
- iv. whether technically feasible and potentially available alternative locations and designs exist;
- v. the applicability, reliability and sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
- vi. any other issue that requires expert or specialized knowledge identified by the Zoning Administrator.

~~e. ***Notice to the Applicant.*** The Zoning Administrator shall send written notice to the applicant when it elects to retain an independent consultant. The applicant shall have two business days to withdraw the application without any liability for any costs or expenses in connection with the independent consultant's review.~~

d.c. ***Deposit; Invoices.*** The applicant must pay for the cost and expense in connection with the independent consultant's review and participation in any meeting. Before the City incurs any costs or expenses, the Zoning Administrator shall require the applicant to tender a reasonable deposit, at the Zoning Administrator's sole discretion. In the event that the deposit is insufficient to cover all costs and expenses, the Zoning Administrator may either (a) require an additional deposit or (b) invoice the applicant. Any required

deposit or invoice must be paid in full within 10 days. The City shall not issue any permit to an applicant who has not paid any applicable fee, deposit or invoice as required in this Code.

E. ~~Notice;~~ **Decisions; Appeals.**

- ~~1. **Posted Notice.** Within 10 days after the applicant submits a request for approval pursuant to Section 6409(a), the applicant must post notice at the project site. The posted notice must contain (i) a general explanation of the proposed collocation or modification; (ii) the applicant's identification and contact information as provided on the application submitted to the City; (iii) contact information for the Zoning Administrator; and (iv) a statement substantially similar to "Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application within 60 days from the filing date, or the City and applicant reach a mutual tolling agreement."~~
- ~~1. **Administrative Review.** The Zoning Administrator shall administratively review a complete and duly filed application for a Section 6409(a) Approval and may act on such application without prior notice or a public hearing.~~
2. **Findings for Approval.** The Zoning Administrator may approve or conditionally approve an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
  - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station.
3. **Criteria for Denial.** Notwithstanding any other provisions in this Article, and consistent with all applicable federal laws and regulations, the Zoning Administrator may deny an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
  - a. does not satisfy the criteria for approval;
  - b. violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
  - c. involves the replacement of the entire support structure.
4. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Article 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.
5. **Written Decision.** Within five working days after the Zoning Administrator renders a decision, the Zoning Administrator shall send written notice to the applicant. In the event that the Zoning Administrator determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the Zoning Administrator will send written notice to the applicant that includes the reasons to support the Zoning Administrator's

decision and states that the application will be automatically denied on the 60th day after the date the application was filed unless the applicant withdraws the application.

6. **Appeal.** Subject to the applicable federal timeframe for permit application review (accounting for any tolling periods), any aggrieved party may appeal an action of the Director as provided in Section 15.04.803.130 of this Code. The Planning Commission shall serve as the hearing body for all appeals of all actions of the Zoning Administrator taken pursuant to this Article, subject to further appeal to the City Council. The applicable hearing body shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (E)(2) and (E)(3) in this section.

F. **Standard Conditions of Approval.** ~~Any~~In addition to all other conditions that may be adopted by the Zoning Administrator, all Section 6409(a) ~~Approval~~Approvals, whether approved by the Zoning Administrator or deemed-granted by the operation of federal law, shall be automatically subject to the conditions of approval described in this subsection 15.04.614.100(F). The Zoning Administrator (or the Planning Commission in its capacity as the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Article.

1. **No Extension of the Underlying Permit Duration.** 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 approval 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 for any conditional use permit, land use permit or 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.
2. **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(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) Approvals. 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 either a conditional use permit or an administrative use permit for those improvements before the one-year period ends. The Zoning Administrator may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
3. **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.

4. ***Build-out Period.*** Any permit approved under this Article or by operation of law shall automatically expire one (1) year from the approval date if the applicant fails to commence construction within that one-year period; provided, however, that the Zoning Administrator may renew any such permit for up to one (1) additional year if the Zoning Administrator receives a written request from the permittee within thirty (30) days prior to the expiration date, at the Zoning Administrator's sole discretion.
5. ***Compliance with Laws.*** Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
6. ***Permittee's Contact Information.*** 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. All such contact information for responsible parties shall be provided to the Zoning Administrator within one (1) business day after permittee receives a written request from the Zoning Administrator.
7. ***Cooperation with Access and Inspections.*** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
8. ***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 and conditions of approval.
9. ***Concealment Elements.*** Permittee acknowledges and agrees that each and every aspect and/or element of the wireless facility, including without limitation its coloring, finishes, placement, orientation and proportionality with the structures in the immediate vicinity, that, by its sense and context, aids, contributes or otherwise furthers the concealment of the facility, in whole or in part, shall be deemed to be a concealment element of the support structure.
10. ***Graffiti Abatement.*** Permittee shall promptly remove any graffiti on the wireless facility at permittee sole expense, and in no instance more than 48 hours from the time of notification by the City or after discovery by the permittee.
11. ***Backup Generator Use.*** Permittee shall not use any backup or standby power generator except (1) when necessary due to a primary power source failure or (2) for routine maintenance/cycling. Permittee shall not operate the generator for maintenance/cycling more frequently than twice per month and then only for no longer than 30 minutes at a time on Wednesdays between 10:00 am and 11:00 am.

12. ***Indemnification.*** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed 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 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.
13. ***Adverse Impacts.*** Permittee shall take 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.
14. ***Building Permit Application Plans.*** In addition to the information required by Section 6.02.160 of the RMC, the permittee must incorporate into building plans and submit with any application to the Building Department, three copies of each of the following: (1) the Section 6409(a) Approval associated with the facility, including without limitation all findings and conditions of approval; and (2) the photo simulations, as required for the application and accurately representing the approved facility as may be modified by any conditions of approval, associated with the Section 6409(a) Approval associated with the facility. The Building Official is not authorized to waive any of these specific submittal requirements irrespective of the exception authority granted by Section 6.02.160.
15. ***Record Retention.*** The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans and specifications, resolutions and other documentation associated with the permit or regulatory approval. In the event that neither the City nor the permittee can locate any permit or other regulatory approval that would have been required for the equipment deployed or installed in connection with the facility, the permittee acknowledges that the City will presume that any such equipment was deployed or installed without proper review and approval.



16. *Joint and Several Liability.* The permittee and the property owner shall be jointly and severally liable for compliance with all conditions of approval adopted under this permit, which includes without limitation compliance with any maintenance or concealment conditions.

#### **15.04.614.110 Compliance Obligations**

An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Code, this Article, 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.