

DUE TO THE ONGOING EMERGENCY CONCERNING THE COVID-19 VIRUS, THIS CITY COUNCIL MEETING WILL BE CONDUCTED PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER N-29-20 WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT.

RESIDENTS MAY OBSERVE THE MEETING REMOTELY VIA LIVESTREAM ON THE CITY WEBSITE OR ON SPECTRUM CABLE TV CHANNEL 3 AND FRONTIER CABLE TV CHANNEL 26

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AGENDA ATTACHED



SPECIAL WORKSHOP UPLAND PLANNING COMMISSION

AGENDA

**June 10, 2020 at 6:30 PM
Council Chambers**

**ROBIN ASPINALL, CHAIR
GARY SCHWARY, VICE CHAIR
CAROLYN ANDERSON, COMMISSIONER
SERGE MAYER, COMMISSIONER
ALEXANDER NOVIKOV, COMMISSIONER
PATRICK SHIM, COMMISSIONER
YVETTE WALKER, COMMISSIONER**

CALL TO ORDER OF THE PLANNING COMMISSION SPECIAL WORKSHOP

PLEDGE OF ALLEGIANCE

ROLL CALL OF THE PLANNING COMMISSION

Commissioners Anderson, Mayer, Novikov, Shim,
Walker, Vice Chair Schwary, Chair Aspinall

ORAL COMMUNICATIONS

This is the time for any citizen to comment on any items that are not listed on the agenda under "Public Hearings" but within the Planning Commission's purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from taking action on items not listed on the agenda.

WORKSHOP

1. Proposed Wireless Telecommunication Regulations
 - a. Discussion regarding updating the permitting requirements for wireless telecommunications facilities including Facility Design, Minimum Separations, and Application Processing and Appeal procedures.

b. Commission Comment/Questions

c. Public Comment/Q&A

COMMISSION COMMUNICATIONS

ADJOURNMENT

Adjourn to the next regularly scheduled Planning Commission meeting on June 24, 2020.

NOTICE TO PUBLIC: All maps, environmental information, and other data pertinent to this item are filed in the City of Upland Development Services Department and will be available for public inspection prior to the meeting at 460 North Euclid Avenue during normal business hours.

If you wish to appeal a decision of the Planning Commission, you must do so within ten (10) calendar days following the meeting. Please contact the Planning Division for information regarding the appeal procedure.

If you challenge the public hearing(s) or the related environmental determinations, in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Upland, at or prior to, the public hearing.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division at 931-4130. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On June 4, 2020, at least 72 hours prior to the meeting, a true and correct copy of this agenda was posted at 460 N. Euclid Avenue (Upland City Hall), 450 N. Euclid Avenue (Upland Public Library) and the City website at www.uplandca.gov per Government Code Section 54954.2.



PLANNING COMMISSION REPORT

ITEM NO. 1

DATE: JUNE 10, 2020

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

PREPARED BY: JOSHUA WINTER, ASSOCIATE PLANNER

SUBJECT: WORKSHOP FOR ZONING CODE AMENDMENT NO. ZA-20-0003 FOR THE ESTABLISHMENT OF NEW REGULATIONS FOR SECTION 17.40 OF THE UPLAND MUNICIPAL CODE REGARDING WIRELESS TELECOMMUNICATIONS

PURPOSE OF WORKSHOP

The City of Upland has initiated proceedings to amend Upland Municipal Code Section 17.40 Wireless Telecommunications in order to provide a comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City of Upland. These proposed regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. Amended Section 17.40 provides standards necessary to: (1) preserve and promote harmonious land uses and the public right-of-way in the City; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the City consistent with the goals, objectives and policies of the General Plan; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.

RECOMMENDED ACTION

The Planning Division recommends that the Planning Commission hold a Public Workshop to discuss, deliberate and provide staff direction on possible changes to the Draft Ordinance. (See Exhibit A – Proposed Section 17.40 Wireless Communications)

BACKGROUND

The ever changing wireless communications industry has led to the City of Upland initiating efforts to amend its current wireless telecommunications regulations, which are located in Section 17.40 of the Upland Municipal Code (See Exhibit B - Current Section 17.40 Wireless Communications), in order to keep up to date with current trends and laws within the wireless industry. Under federal law, many limits are placed on local government when regulating wireless communication facilities (WCFs). City regulations cannot have the effect of prohibiting wireless service, discriminating among wireless service providers and the City may not regulate WCFs on the basis of the environmental/health effects of radio frequency (RF) emissions. That said, the City may regulate the aesthetics of WCFs, including design, location, height and setbacks.

The Federal and State laws and regulations governing WCFs that the City must comply with include the following:

1. Federal Telecommunications Act

Under the existing Federal Telecommunications Act, a city may apply its general zoning and building requirements to the construction of new wireless telecommunication facilities, subject to the following limits that preempt any contrary local requirements:

- Cities may not regulate wireless facilities based on the environmental effects of radio frequency (RF) emissions from facilities that comply with the Federal Communication Commission's (FCC) regulations concerning such emissions.
- Cities cannot unreasonably discriminate between providers of functionally equivalent wireless services.
- Cities cannot prohibit wireless services or impose requirements that have the effect of prohibiting wireless services. Pursuant to this rule, a city regulation cannot deny approval for a wireless application if it would prevent the provider from closing a significant gap in its service coverage via the least intrusive means.
- Cities must provide a written statement of its reasons whenever it denies approval to a wireless application
- Cities must provide its reasons for denying a wireless application in writing and at essentially the same time as its decision.

These rules only apply when a city is exercising its regulatory authority; such as when it is applying zoning rules to the development of private property. They do not apply when a city is operating as a landlord, such as when it is deciding whether to lease the use of its own property.

2. Spectrum Act

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, also sometimes called the Spectrum Act, requires cities to ministerially approve any application to modify an existing wireless tower or base station that does not substantially change its physical dimensions.

This applies to applications for the collocation of new transmission equipment, the removal of transmission equipment, or replacement of transmission equipment that meet certain requirements:

- The existing tower or base station must have been lawfully constructed and approved under whatever review process the city had at the time of its installation.
- The proposed change cannot substantially change the existing facility, which includes any change that would defeat existing concealment features.

3. FCC Small Cell Order

In 2018, the FCC adopted a new rule for a newly defined class of “small cell” wireless facilities. The rule requires city regulations for small wireless facilities to be reasonable, objective, non-discriminatory, and published in advance. It further imposes tight deadlines for approving or denying small wireless facility applications and limits on the fees the city can charge for applications and for the use of City-owned infrastructure in the public right-of-way.

“Small Wireless Facilities” are defined as wireless telecommunication facilities that meet the following requirements:

- They are mounted on either structures 50 feet or less in height including their antennas, or no more than 10 percent taller than other adjacent structures, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
- Each antenna is no more than three cubic feet in volume, excluding associated antenna equipment; and
- All equipment associated with the antenna and any pre-existing associated equipment is no more than 28 cubic feet in volume; and
- The facilities do not expose people to radiofrequency (RF) radiation in excess of FCC standards.

The FCC Small Cell Order requires that city regulations for small wireless facilities concerning aesthetics, undergrounding, and spacing must be:

- Reasonable, meaning technically feasible and reasonably related to the harms created by unsightly deployments; and
- No more burdensome than those applied to other types of infrastructure deployments; and
- Objective (i.e., non-discretionary); and
- Published in advance.

Any city standards that do not meet the requirements after that date are unenforceable as to small wireless facilities.

The cap on fees that cities may charge for allowing wireless facilities to attach to city-owned equipment in the public right-of-way is particularly severe. Cities were previously under no obligation to allow such attachments and could therefore negotiate with providers for compensation. Under the FCC Order, however, local agencies can no longer leverage their properties in the right-of-way for additional revenue, but only recover fees that are reasonably related to their actual costs.

4. FCC Shot Clocks

Under rules adopted by the FCC, cities are generally required to make a decision on wireless applications before the expiration of various deadlines.

Deadline	Application Type
60 Days	Section 6409 (i.e., modification to an existing wireless facility that does not cause a substantial change) Small wireless facility attached to an existing structure
90 Days	Small wireless facility attached to a new/replacement structure Non-small wireless facility attached to an existing structure (i.e., rooftop, building facade, field light, etc.)
150 Days	New, freestanding non-small wireless facilities (i.e., tower, monopole, monopine, etc.) Non-small wireless facilities on a replacement structure

This summary demonstrates the general requirements of the FCC’s Shot Clock rules, but does not include the full scope or complexity of their application. What is

important to note here, is that they place additional pressures on cities to act quickly in response to wireless applications.

5. California Public Utilities Code §§ 7901, 7901.1

Section 7901 of the State Public Utilities Code grants telephone corporations, including wireless service providers, a statewide franchise to operate in the public right-of-way regardless of any local municipal franchise requirement.

Section 7901 also bars cities from charging telephone corporations any revenue fee or charge as condition for using the public right-of-way. Cities may only charge telephone companies a reasonable fee to recover the cost of reviewing and approving construction permits, encroachment permits, and the like. (This rule does not apply to attachments to city-owned equipment or structures in the public right-of-way, but the FCC Small Cell Order discussed above does).

Under Section 7901.1, however, rights granted to telephone companies are still subject to reasonable municipal regulation as to the time, place, and manner in which telephone companies access the right-of-way. So although cities cannot prohibit telephone facilities, including wireless facilities, in the public-right-of-way, they can still regulate such facilities in a reasonable manner.

DISCUSSION

Currently, the City's regulations for WCFs is contained within Section 17.40 (See Exhibit B) of the Upland Municipal Code and within the City Policy adopted by the City Council under Resolution No. 6489 and No. 6492. The goal of the new regulations is to provide clear and comprehensive regulations, and a straight forward permitting process for all WCFs. The Draft Ordinance is broken up into 25 Sections (17.40.10-250) which regulate WCFs on private property, and within the public right-of-way. Key provisions of the ordinance include:

- Permit Application Requirements. The ordinance prescribes applications types for specific requests, for example, WCFs on private property typically require a Development Plan Review and Conditional Use Permit, whereas a small cell facility requires a "Small Wireless Facility Permit". Further, the ordinance outlines what materials must be submitted with the application, and the procedures for submittal.
- Zone and location requirements. The ordinance identifies zones in which WCFs are permitted, conditionally permitted or prohibited and provides a location preference hierarchy. WCFs are prohibited in Residential zones, and requires a buffer if 200 feet for WCFs adjacent to residential zones. The preference hierarchy establishes industrial land as the first preference, with last being right-of-way adjacent to historical districts.
- Design and development standards. Establishes design and development standards for all facilities, and also specifically includes requirements for

facilities in the public right-of-way and on private property. Requires new facilities be camouflaged, designed and built with high quality materials and establishes setback and height limitations;

- Conditions of Approval. Establishes standard Conditions of Approval for all facilities that include compliance with FCC standards, requires a performance bond to ensure the tower is removed if operation ceases, establishes timelines for installation, and requires indemnification for the City.
- Operations and Maintenance standards. Establishes operation and maintenance standards to ensure a WCF is kept in good condition, and operates consistent with the emissions standards set forth by the FCC.
- Findings. Establishes required findings the approval authority is required to make, which include findings for design, the project complies with the provision of the ordinance, in addition to the findings required under the applications (Development Plan Review and Conditional Use Permits) for WCFs.
- Provisions for Permit expiration, revocation, cessation and abandonment. The ordinance outlines the process for removal of a WCF in the case of cessation of the use or abandonment. Also establishes a permit expiration that requires the applicant to resubmit, and show compliance with the regulations and conditions of approval for extensions.
- State and federal compliance. The ordinance implements the implements requirements under the Spectrum Act and Small Cell Report and Order while maintaining local control to the greatest extent feasible.

ENVIRONMENTAL ASSESSMENT

This ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)), the common sense exemption covering activities with no possibility of having a significant effect on the environment because the Ordinance does not result in any actual installation or construction of any facilities, and only establishes guidelines for future telecommunications development. In addition, the City of Upland has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

EXHIBITS

- Exhibit A: Proposed Section 17.40 Wireless Telecommunications
Exhibit B: Current Section 17.40 Wireless Telecommunications

**Exhibit A – Proposed Section 17.40
Wireless Telecommunications**



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF UPLAND REGARDING
WIRELESS TELECOMMUNICATION FACILITIES AND
AMENDING THE UPLAND MUNICIPAL CODE REGARDING
THE SAME

WHEREAS, there have been significant changes in the types of wireless communication facilities used to provide communications services within the City; and

WHEREAS, both federal and state law has been modified regarding the regulation of wireless communication facilities both in the public rights or way and on private property outside of the public rights of way; and

WHEREAS, the City desires ensure to the greatest extent allowed under federal state law that wireless communication facilities are located, designed, installed, constructed, maintained, and operated in a manner that meets the aesthetic and public health and safety requirements of the City; and

WHEREAS, the City deems it necessary and appropriate to adopt standards and regulations relating to the location, design, installation, construction, maintenance, and operation of wireless communication facilities, including towers, antennas, and other structures both in the public rights or way and on private property outside of the public rights of way and to provide for the enforcement of these standards and regulations consistent with federal and state legal requirements;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF UPLAND ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals are true.

Section 2. Purpose and Intent. The regulations contained in this Ordinance are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits from advanced wireless services with local values, which include without limitation promoting and preserving the aesthetic character of the City. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

This Ordinance is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide

any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

Section 2. Municipal Code Amendments. The Upland Municipal Code is hereby amended to as follows:

A. Paragraph D of Section 5.36.190 of the Upland Municipal Code is hereby deleted.

B. Chapter 17.40 of the Upland Municipal Code is hereby amended and restated in its entirety to read as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full.

Section 4. CEQA. The City of Upland has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. In addition, the City of Upland has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

Section 5. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

Section 6. Publication and Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

APPROVED AND ADOPTED this ____ day of _____, 2020.

DEBBIE STONE
MAYOR

ATTEST:

KERI JOHNSON
CITY CLERK

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on date, and was finally passed at a regular meeting of the City Council of the City of Upland held on the ____ day of _____, 2020, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAINED:	COUNCIL MEMBERS:

KERI JOHNSON
CITY CLERK

Exhibit A

CHAPTER 17.40 WIRELESS TELECOMMUNICATIONS FACILITIES

17.40.010 Purpose.

- A. The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City of Upland. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary to: (1) preserve and promote harmonious land uses and the public right-of-way in the City; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the City consistent with the goals, objectives and policies of the General Plan; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.
- B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

17.40.020 Definitions.

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

1. "Accessory equipment" means any equipment associated with the installation of a wireless telecommunications facility, including, but not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.
2. "Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the

provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

3. “Base station” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Section 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. Section 1.40001(b)(1)(i) and (ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. Section 1.40001(b)(1)(i) and (ii).
4. “Building-mounted” means mounted to the side or façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.
5. “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
6. “Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.
7. “Eligible facilities request” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as any

request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.

8. "Eligible support structure" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
9. "Existing" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
10. "FCC" means the Federal Communications Commission or its duly appointed successor agency.
11. "Modification" means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation.
12. "Monopole" means a structure consisting of a single pole used to support antennas or related equipment and includes a monopine, monoredwood, and similar monopoles camouflaged to resemble trees or other objects.
13. "Personal wireless services" means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
14. "Personal wireless service facilities" means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
15. "Director" means the City Development Services Director or his or her designee.
16. "Pole" means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Upland Municipal Code.

17. “Public right-of-way or “right-of-way” means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
18. “Reviewing authority” means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
19. “RF” means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.
20. “Roof-mounted” means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
21. “Section 6409(a)” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a), as such law may be amended from time to time.
22. “Section 6409(a) approval” means the approval required by Section 6409(a).
23. “Site” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
24. “Small wireless facility” or “small wireless facilities” means the same as defined by the FCC in 47 C.F.R. § 1.6002(1), as may be amended or superseded.
25. “Substantial change” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.
 - a. For towers outside the public rights-of-way, a substantial change occurs when:
 - i. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - ii. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or

- iii. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - iv. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- i. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - ii. The proposed collocation or modification increases the width more than six feet from the edge of the wireless tower or base station; or
 - iii. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - iv. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are 10% larger in height or volume than any existing ground-mounted equipment cabinets; or
 - v. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition, for all towers and base stations wherever located, a substantial change occurs when:
- i. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
 - ii. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured

from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

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

phones, CB radios, emergency services radio, and other similar portable devices as determined by the Director.

- d. Telecommunications facilities owned and operated by any government agency.
- e. Telecommunications facilities owned and operated by any emergency medical care provider.
- f. Mobile services providing public information coverage of news events of a temporary nature.
- g. Any wireless telecommunications facilities exempted from the Upland Municipal Code by federal law or state law.

17.40.030 Applicability.

- A. This chapter applies to all wireless telecommunications facilities as follows:
 - 1. All facilities for which applications were not approved prior to the effective date of the ordinance codified in this chapter shall be subject to and comply with all provisions of this chapter;
 - 2. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance, cessation of use and abandonment, removal and restoration of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities; provided, however, that in the event a condition of approval conflicts with a provision of this chapter, the condition of approval shall control unless and until the permit is amended or revoked.
- B. Title 17, including, but not limited to, this chapter shall not apply to a wireless telecommunications facility on property owned by the City.
- C. Notwithstanding any provision of the Upland Municipal Code to the contrary, provisions governing the installation of a public utility facility or accessory equipment shall not apply to wireless telecommunications facilities. This chapter shall govern all applications for wireless telecommunications facilities.

17.40.040 Wireless telecommunications facility permit required.

- A. Permit Required. No wireless telecommunications facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of a permit as required by this chapter as set forth in the table below. Such permit shall be in addition to any other permit required pursuant to the Upland Municipal Code.

Description Wireless Facility	Private Property		Public Right-of-Way ⁴
	RS-4, RS-6, RS-7.5, RS-10, RS-15, RS-20, MH, RM-10, RM-20, RM-30 Residential Specific Plans	All Other Zoning Districts	Nonresidential Zoning Districts
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/Development Plan Review	Conditional Use Permit/Development Plan Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/Development Plan Review	Conditional Use Permit/Development Plan Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/Development Plan Review	Conditional Use Permit/Development Plan Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	Permitted	Permitted
Small wireless facility ³	Not Permitted	Permitted	Permitted

- 1 See requirements of Section 17.40.140.
- 2 See requirements of Section 17.40.150.
- 3. See requirements of Section 17.40.160
- 4 For any public right-of-way not within a zoning district, the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location.

B. Non-exclusive Grant. No approval granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

17.40.050 Application for permit.

- A. Application Content. All applications for a permit required by this chapter must be made in writing on such form as the Director prescribes, which shall include the following information, in addition to all other information determined necessary by the Director as well as all other information required by the City as part of an application for a conditional use permit:
1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization.
 2. The type of facility, including a full written description of the proposed facility, its purpose and specifications.
 3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the Director.
 4. Photographs of facility equipment and an accurate visual impact analysis with photo simulations.
 5. Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or other approvals required by the FCC.
 6. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
 7. A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years.
 8. A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment including, without limitation, all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with Chapter 7.16 (Noise Control). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

9. If the applicant claims it requires an exception to the requirements of this chapter, all information and studies necessary for the City to evaluate that claim.
10. An application and processing fee and a deposit for a consultant review as set forth in subsection B of this section.
11. Any other studies or information determined necessary by the Director may be required.

B. Independent Expert.

1. The Director is authorized to retain on behalf of the City an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including, but not limited to, the following matters:
 - a. The accuracy, adequacy, and completeness of submissions;
 - b. Compliance with applicable radio frequency emission standards;
 - c. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
 - d. Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis; and
 - e. The validity of conclusions reached or claims made by applicant.
2. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

17.40.060 Location and configuration preferences.

- A. Purpose. The purpose of this section is to provide guidelines to applicants and the reviewing authority regarding the preferred locations and configurations for wireless telecommunication facilities in the City, provided that nothing in this section shall be construed to permit a wireless telecommunication facility in any location or configuration that it is otherwise prohibited by this chapter.
- B. Review of Location and Configuration. The reviewing authority shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

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

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

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

- (1) In the GI (General Industrial) zoning district,
- (2) In the LI (Light Industrial) zoning district,
- (3) In the RC (Regional Commercial) zoning district,
- (4) In the C/I-MU (Commercial/Industrial Mixed-Use) zoning district,
- (5) In the HC (Highway Commercial) zoning district,
- (6) In the HC (Highway Commercial) land use designation in the Colonies Specific Plan,
- (7) In the C/O-MU (Commercial/Office Mixed-Use) zoning district,
- (8) In the NC (Neighborhood Commercial) zoning district,
- (9) In the NC (Neighborhood Commercial) land use designation in the Colonies Specific Plan,
- (10) In the Commercial land use designation in the Park View Specific Plan,
- (11) In the C/R-MU (Commercial/Residential Mixed-Use) zoning district,
- (12) In the B/R-MU (Business/Residential Mixed-Use) zoning district,

- (13) In the OP (Office Professional) zoning district,
- (14) In the public right-of-way with the closest adjacent district being GI (General Industrial) zoning district,
- (15) In the public right-of-way with the closest adjacent district being LI (Light Industrial) zoning district,
- (16) In the public right-of-way with the closest adjacent district being RC (Regional Commercial) zoning district,
- (17) In the public right-of-way with the closest adjacent district being C/I-MU (Commercial/Industrial Mixed-Use) zoning district,
- (18) In the public right-of-way with the closest adjacent district being HC (Highway Commercial) zoning district,
- (19) In the public right-of-way with the closest adjacent district being HC (Highway Commercial) land use designation in the Colonies Specific Plan,
- (20) In the public right-of-way with the closest adjacent district being C/O-MU (Commercial/Office Mixed-Use) zoning district,
- (21) In the public right-of-way with the closest adjacent district being NC (Neighborhood Commercial) zoning district,
- (22) In the public right-of-way with the closest adjacent district being NC (Neighborhood Commercial) land use designation in the Colonies Specific Plan,
- (23) In the public right-of-way with the closest adjacent district being the Commercial land use designation in the Park View Specific Plan,
- (24) In the public right-of-way with the closest adjacent district being C/R-MU (Commercial/Residential Mixed-Use) zoning district,
- (25) In the public right-of-way with the closest adjacent district being B/R-MU (Business/Residential Mixed-Use) zoning district,
- (26) In the public right-of-way with the closest adjacent district being OP (Office Professional) zoning district,

(27) In the public right-of-way with the closest adjacent district being the RM (Residential Multi-family) zoning district,

9. Any public right-of-way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the register of historic places.

(29) Any parcel or right-of-way within 500 feet of a school site.

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

17.40.070 Design and development standards for all facilities.

A. Basic Requirements. The design and development standards set forth in this section apply to all wireless telecommunications facilities no matter where they are located. Wireless telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section.

B. No Speculative Facilities. A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the City.

C. General Guidelines. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.

D. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

E. Antennas. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers.

Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.

- F. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the City to provide screening or to block the line of sight between facilities and adjacent uses.
- G. Signage. Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.
- H. Lighting. No wireless telecommunications facility may be illuminated unless either specifically required by the Federal Aviation Administration or other government agency or in association with the illumination of an athletic field on City or school property. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers, and monopoles.
- I. Noise.
 - 1. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - 2. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.
 - 3. At no time shall equipment noise from any facility exceed an exterior noise level of 50 dBA at the facility's property line if the facility is located in a business or commercial zone that permits those uses, provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
 - 4. Any equipment, including, but not limited to, air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise

attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the Upland Municipal Code.

- J. Security. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance.
- K. Modification. At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

17.40.080 Additional design and development standards for facilities outside the public right-of-way.

- A. Basic Requirements. Facilities located outside the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.
- B. Location. A wireless communication facility shall not be located within 1,500 feet of another wireless communication facility.
- C. No Parking Interference. In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.
- D. Roof-Mounted Facilities. Roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor alter the character of the structure.
- E. Facilities Mounted to a Telecommunications Tower. Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.
 - 1. Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and

meet FCC requirements. The applicant shall provide documentation satisfactory to the Director establishing compliance with this paragraph. In any event, facilities mounted to a telecommunications tower shall not exceed the applicable height limit for structures in the applicable zoning district.

2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.
3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.
6. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

F. Accessory Equipment. All accessory equipment associated with the operation of any wireless telecommunications facility shall be fully screened or camouflaged, and located in a manner to minimize their visibility to the greatest extent possible utilizing the following methods for the type of installation:

1. Accessory equipment for roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible. If not feasible, such accessory equipment may be located on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.
2. Accessory equipment for facilities mounted to a telecommunications tower shall be visually screened by locating the equipment either within a nearby

building, in an underground vault (with the exception of required electrical panels) or in another type of enclosed structure, which shall comply with the development and design standards of the zoning district in which the accessory equipment is located. Such enclosed structure shall be architecturally treated and adequately screened from view by landscape plantings, decorative walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.

- G. Height. Telecommunication facilities shall not exceed the maximum building height for the applicable zoning excepting when:
 - 1. If the height of the tower exceeds the height limitation of the district in which it is located it must be set back an additional 10 feet from the set-back line for every 10 feet added to the height, provided a maximum of 20 feet in height is allowed.
- H. Residential Buffer. Telecommunication facilities shall be set back a minimum of 200 feet from the property line of a residential zoned property.

17.40.090 Additional design and development standards for facilities in the public right-of-way.

- A. Basic Requirements. Facilities located in the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.
- B. Right-of-Way Authority. An encroachment permit must be obtained for any work in the public right-of-way. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the City shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.
- C. Antennas.
 - 1. Utility Poles. The maximum height of any antenna mounted to an existing utility pole shall not exceed 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.
 - 2. Street Light Poles. The maximum height of any antenna mounted to a street light pole shall not exceed seven feet above the existing height of a street light pole in a location with its closest adjacent district being a commercial

zoning district and shall not exceed three feet above the existing height of a street light pole in any other zoning district. Any portion of the antenna or equipment mounted on such a pole shall be no less than 18 feet above any drivable road surface.

D. Poles.

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

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

F. Location.

1. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic,

inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists.

2. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
 3. Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.
 4. Each pole mounted wireless telecommunications facility must be separated by at least 1,500 feet.
 5. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.
 6. All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.
- G. Americans with Disabilities Act Compliance. All facilities shall be built in compliance with the Americans with Disabilities Act (ADA).
- H. Accessory Equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged.
- I. Documentation. The applicant shall provide documentation satisfactory to the Director establishing compliance with this section.

17.40.100 Conditions of approval for all facilities.

- A. In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:
1. Before the permittee submits any application for a building permit or other permits required by the Upland Municipal Code, the permittee must

incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “approved plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.

2. Where feasible, as new technology becomes available, the permittee shall:
 - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Upland Municipal Code.
3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.
 - c. Name, address, and telephone number of the property owner if different than the permittee.
4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
5. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration. The City shall retain a consultant, at the sole expense of the permittee, to perform testing demonstrating compliance with current regulatory and operational standards. Tests shall occur upon commencement of operations and annually thereafter.
7. If the Director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the Director may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.
8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the Upland Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the Director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.
9. Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed Council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.
10. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.
11. A condition setting forth the permit expiration date in accordance with Section 17.40.200 shall be included in the conditions of approval.

17.40.110 Additional conditions of approval for facilities in the public right-of-way.

- A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in Section 17.40.100, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:
1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the City engineer for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the City shall be moved to accommodate a wireless telecommunications facility unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.
 3. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
 4. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall

restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Director, the Director shall cause such repair to be completed at permittee's sole cost and expense.

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

provided in the Upland Municipal Code, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

9. The applicant shall obtain all required traffic control permits prior to the installation or repair of a wireless communication facility.

17.40.120 Findings.

A. Where a wireless telecommunication facility requires a conditional use permit under this chapter, the reviewing authority shall not approve any application unless, in addition to the findings generally applicable to all conditional use permits, all of the following additional findings are made:

1. The proposed facility complies with all applicable provisions of this chapter.
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.

B. In addition to the findings in subsection A of this section, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure.

17.40.130 Exceptions.

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

17.40.140 Eligible facility requests covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

- A. Purpose. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. Section 1455(a), generally requires that state and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential “deemed granted” remedy when the state or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. Section 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

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

- B. **Applicability.** This section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).
- C. **Approval Required.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a Section 6409(a) approval shall be subject to the Director's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this chapter.
- D. **Other Regulatory Approvals.** No collocation or modification approved under any Section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any Section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.
- E. **Application Requirement.** The City shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this section and any other written rules the City or the Director may establish from time to time. An application must include the information required by Section 17.40.050 and the following additional information:
 - 1. A title report prepared within the six months prior to the application filing date in order for the City verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
 - 2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. Section 1.40001 et seq., require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of

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

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

1. Pre-Submittal Conference. Before application submittal, applicants must schedule and attend a pre-application meeting with the Director for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The Director may, in the Director's discretion, grant a written exemption to the submittal appointment under Section 17.40.140(F)(2) or for a specific requirement for a complete application to any applicant who: (a) schedules, attends and fully participates in any pre-submittal conference; and (b) shows to the Director's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.
2. Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.
3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the Director. The Director shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. Applications Deemed Withdrawn. To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
 5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the Director to develop and publish permit application forms, checklists, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing requests for Section 6409(a) approvals. Without further authorization from the City Council, the Director may, from time to time, update and alter any such permit application forms, checklists, informational handouts and other related materials as the Director deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. 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.
- G. Administrative Review—Decision Notices. The Director shall administratively review an application for a Section 6409(a) approval and act on such an application without prior notice or a public hearing. Within five working days after the Director conditionally approves or denies an application submitted for Section 6409(a) approval or before the FCC timeframe for review expires (whichever occurs first), the Director shall send a written notice to the applicant. In the event that the Director determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the Director will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.
- H. Required Findings for 6409(a) Approval. The Director may approve or conditionally approve an application submitted for Section 6409(a) approval when the Director finds that the proposed project:
1. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and

2. Does not substantially change the physical dimensions of the existing wireless tower or base station.
- I. Criteria for Denial Without Prejudice. Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
 1. Does not satisfy the criteria for approval;
 2. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
 3. Involves the replacement of the entire support structure.
 - J. Conditional 6409(a) Approvals. Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the City's authority to conditionally approve an application for a Section 6409(a) approval to protect and promote the public health, safety and welfare.
 - K. Appeals. Notwithstanding any provision of the Upland Municipal Code to the contrary an applicant may appeal a decision by the Director to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the Director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the Director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City Manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in subsections H and I of this section. The decision of the City Manager shall be final and not subject to any further administrative appeals.
 - L. Standard Conditions of Approval. In addition to all other conditions adopted by the Director, all Section 6409(a) approvals, whether approved by the Director or deemed approved by the operation of law, shall be automatically subject to the following conditions in this section; provided, however, that the Director shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:
 1. Approved Plans. Before the permittee submits any application for a building permit or other permits required by the Upland Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "approved plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.

2. **Permit Term.** The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a Section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
3. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) approvals or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes, without limitation, extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) approval when it has submitted an application for a conditional use permit for those improvements before the one-year period ends.
4. **No Waiver of Standing.** The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.
5. **Build-Out Period.** The Section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the Planning Commission.
6. **Maintenance Obligations—Vandalism.** The permittee shall keep the site, which includes, without limitation, any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions

in this Section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

7. Compliance with Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409(a) approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws.
8. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on any day and at any time prohibited under the Upland Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director may issue a stop work order for any work that violates this condition.
9. Noise Complaints. The permittee shall conduct all activities on the site in compliance with the noise standards in the Upland Municipal Code. In the event that any person files a noise complaint and the City verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the City, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee’s personnel rather than the permittee’s equipment.
10. Inspections—Emergencies. The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm

to property or persons. The permittee will be permitted to supervise the City or its designee while such inspection or emergency access occurs.

11. Contact Information. The permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes, without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.
12. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all: (a) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this Section 6409(a) approval; and (b) other claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this Section 6409(a) approval or the wireless facility. In the event the City becomes aware any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this Section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409(a) approval.
13. Performance Bond. Before the City issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the City Manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes, without limitation, all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or

installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code Section 65964(a), the City Manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

14. Record Retention. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes, without limitation, this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
15. Compliance Obligations. An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Upland Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.

17.40.150 Collocation facilities covered under California Government Code Section 65850.6.

- A. Purpose. The purpose of this section is to comply with an application for a wireless telecommunications collocation facility under California Government Code Section 65850.6, for which a Section 6409(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.
- B. Definitions. For the purposes of this section, the following terms are defined as follows:
 1. "Collocation facility" means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.
 2. "Wireless telecommunications facility" means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

3. "Wireless telecommunications collocation facility" means a wireless telecommunications facility that includes collocation facilities.
- C. Procedures. An application for a wireless telecommunications collocation facility under California Government Code Section 65850.6 shall be processed in the same manner as an application for Section 6409(a) approval is processed, except that where the process requires justification for the Section 6409(a) approval, the applicant shall instead provide the justification for a wireless telecommunications collocation facility under California Government Code Section 65850.6.
- D. Requirements. All requirements, regulations, and standards set forth in this chapter for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:
1. The applicant for a wireless telecommunications collocation facility permit shall describe or depict:
 - a. The wireless telecommunications collocation facility as it will be initially built; and
 - b. All collocations at full build-out, including, but not limited to, all antennas, antenna support structures, and accessory equipment.
 2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.
 3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.
- E. Permitted Use. Notwithstanding any other provision of this chapter, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use only if all of the following requirements are satisfied:
1. The wireless telecommunications collocation facility:
 - a. Was approved after January 1, 2007, by discretionary permit;
 - b. Was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and
 - c. Otherwise complies with the requirements of California Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance

and maintenance requirements, regulations and standards in this chapter and the conditions of approval in the wireless telecommunications collocation facility permit.

2. The collocations were specifically considered when the relevant environmental document was prepared for the wireless telecommunications collocation facility.
 3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permits, as required pursuant to the Upland Municipal Code.
- F. New or Amended Permit. Except as otherwise provided above, approval of a new or amended permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:
1. Increases the height of the existing permitted telecommunications tower or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or
 2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.
- G. Appeals. Notwithstanding any provision of the Upland Municipal Code to the contrary, including, but not limited to, Section 20.62.060, any applicant may appeal a decision by the Director. The appeal must be filed within 10 days from the Director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the Director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City Manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in this section. The decision of the City Manager shall be final and not subject to any further administrative appeals.

17.40.160 Small Wireless facilities.

- A. Purpose. This section 17.40.160 has been established to implement the requirements of the restrictions imposed on the City's ability to regulate small wireless facilities by the Declaratory Ruling and Third Report and Order, FCC 18-133 by the Federal Communications Commission ("FCC") and regulations subsequently adopted pursuant thereto (collectively for purposes of this Section referred to as the "Small Cell Order"), which significantly curtailed local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. This section therefore establishes reasonable, uniform and comprehensive

standards and procedures for small wireless facility deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law.

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

- B. **Applicability.** This section applies to all small wireless facilities, whether or not located in the public right-of-way. Small wireless facilities are subject to all requirements of this Chapter to the extent not in conflict with the requirements of this section. In the event of any conflict between the provisions of this section 17.40.160 and another provisions of this Chapter, the provisions of this section 17.40.160 shall apply. No person shall construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove, or otherwise deploy any small wireless facility in violation of this Section 17.40.160.
- C. **Decision Making Authority.** The Director shall be the decision making authority for all small wireless facilities.
- D. **Other Regulatory Approvals.** No approval under this section shall be effective unless and until the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any small wireless facility approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.
- E. **Application Requirement.** The City shall not approve any small wireless facility subject to this chapter except upon a duly filed application consistent with this section and any other written rules the City or the Director may establish and publish from time to time. An application must include the information required by Section 17.40.050 and the following additional information:
 - 1. A title report prepared within the six months prior to the application filing date in order for the City verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application. This

paragraph shall apply to applications for small wireless facilities to be located in the public right-of-way.

2. A written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a small wireless facility. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include: (a) whether and why the support structure qualifies as an existing tower or existing base station; and (b) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

F. Procedures for a Duly Filed Application. The City shall not review any application unless duly filed in accordance with all mandatory requirements of the following procedures:

1. Pre-Submittal Conference. The City encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.
2. Submittal Appointment. All applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Potential applicants may generally submit either one application or one batched application per appointment as provided below. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to offer an appointment within five working days after the approval authority receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
3. Batched Applications. Applicants may submit applications individually or in a batch; provided, that the number of small wireless facilities in a batch should be limited to five and all facilities in the batch should be substantially the same with respect to equipment, configuration, and support structure.

Applications submitted as a batch shall be reviewed together, provided that each application in the batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, all other applications in the same batch shall be automatically deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the Director. The Director shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.
 4. Applications Deemed Withdrawn. To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
 5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the Director to develop and publish permit application forms, checklists, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing requests for small wireless facility approvals. Without further authorization from the City Council, the Director may, from time to time, update and alter any such permit application forms, checklists, informational handouts and other related materials as the Director deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. 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. Until such time following the enactment of this Section that the Director establishes such rules and regulations, all small wireless facility applications shall be subject to the application, review, and other procedural requirements found in
- G. Administrative Review—Decision Notices. The Director shall administratively review an application for a small wireless facility approval and act on such an

application without prior notice or a public hearing. Within five working days after the Director conditionally approves or denies an application submitted for small wireless facility approval or before the FCC timeframe for review expires (whichever occurs first), the Director shall send a written notice to the applicant. In the event that the Director determines that an application submitted for approval does not qualify for approval, the Director will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.

- H. Required Findings for Small Wireless Facility Approval. The Director may approve or conditionally approve an application submitted for approval when the Director finds that the proposed project:
 - 1. The proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 - 2. The proposed facility would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - 3. The proposed facility would not be located on a prohibited support structure identified in this Policy
 - 4. The proposed facility would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - 5. The proposed facility complies with all applicable design standards in this Policy;
 - 6. The applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.
- I. Conditional Small Wireless Facility Approvals. Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the City's authority to conditionally approve an application for a small wireless facility approval to protect and promote the public health, safety and welfare.
- K. Appeals. Any decision by the Director shall be final and not subject to any administrative appeals.
- L. Standard Conditions of Approval. In addition to all other conditions adopted by the Director, all small wireless facility approvals, whether approved by the Director or

deemed approved by the operation of law, shall be automatically subject to the following conditions in this section; provided, however, that the Director shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:

1. **Approved Plans.** Before the permittee submits any application for a building permit or other permits required by the Upland Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “approved plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. **Permit Term.** The small wireless facility permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to the small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend the term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
3. **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Upland Municipal Code and this Policy that exist at the time the decision to renew the permit is rendered. The approval authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety reasons.
4. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any provision of federal law such that federal law would not mandate approval of the small wireless facility approved by the City, such approval shall automatically expire one year from the effective date of the applicable judicial order, unless the decision would not authorize accelerated termination of previously approved small wireless facility approvals or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which

includes, without limitation, extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated small wireless facility approval when it has submitted an application for a conditional use permit for those improvements before the one-year period ends.

5. No Waiver of Standing. The City's approval does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC rules that apply to small wireless facilities or any Small wireless facility approval.
6. Build-Out Period. The small wireless facility approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the Planning Commission.
7. Post-Installation Certification. Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.
8. Maintenance Obligations; Vandalism. The permittee shall keep the site, which includes, without limitation, any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in this Small wireless facility approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
7. Compliance with Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the

use authorized in this Small wireless facility approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws.

9. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on any day and at any time prohibited under the Upland Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director may issue a stop work order for any work that violates this condition.
10. Inspections; Emergencies. The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City or its designee while such inspection or emergency access occurs.
11. Contact Information. The permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes, without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.
12. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all: (a) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small wireless facility approval; and (b) other claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the

permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this Small wireless facility approval or the wireless facility. In the event the City becomes aware any claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small wireless facility approval, and that such indemnification obligations will survive the expiration or revocation of this Small wireless facility approval.

13. Performance Bond. Before the City issues any construction permit in connection with the small wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the City Manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes, without limitation, all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code Section 65964(a), the City Manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.
14. Permit Revocation. The approval authority may recall the small wireless facility approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to the approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance thereafter continues, the Director may, following notice and an opportunity for the permittee to be heard (which hearing may be limited to written submittals), revoke the approval or amend the conditions of approval as the Director deems necessary or appropriate to correct any such noncompliance.
15. Record Retention. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the small wireless facility, which includes, without limitation, this approval, the approved plans and photo simulations incorporated into this

approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

16. **Compliance Obligations.** An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Upland Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.
17. **Abandoned Wireless Facilities.** A small wireless facility shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Upland Municipal Code. In the event that the permittee does not comply with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
18. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless otherwise approved by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
19. **Cost Reimbursement (Applicable to small wireless facilities within public rights-of-way).** The permittee is deemed to have acknowledged and agreed that (i) the permittee's request for authorization to construct, install and/or operate small the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (iii) any application fees required for the application may

not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the small wireless facility unless and until any outstanding costs have been reimbursed to the City by the permittee.

20. Future Undergrounding Programs (Applicable to small wireless facilities within public rights-of-way). Notwithstanding any term remaining on any small wireless facility approval, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
21. Electric Meter Upgrades (Applicable to small wireless facilities within public rights-of-way.) If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
22. Rearrangement and Relocation (Applicable to small wireless facilities within public rights-of-way). The permittee shall be deemed to have acknowledged and agreed that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged

and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

M. Location Requirements.

1. Preface to Location Requirements. To better assist applicants and decisionmakers to understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve less-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
2. Locational Preferences. The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
 - a. In the GI (General Industrial) zoning district,
 - b. In the LI (Light Industrial) zoning district,
 - c. In the RC (Regional Commercial) zoning district,
 - d. In the C/I-MU (Commercial/Industrial Mixed-Use) zoning district,
 - e. In the HC (Highway Commercial) zoning district,

- f. In the HC (Highway Commercial) land use designation in the Colonies Specific Plan,
- g. In the C/O-MU (Commercial/Office Mixed-Use) zoning district,
- h. In the NC (Neighborhood Commercial) zoning district,
- i. In the NC (Neighborhood Commercial) land use designation in the Colonies Specific Plan,
- j. In the Commercial land use designation in the Park View Specific Plan,
- k. In the C/R-MU (Commercial/Residential Mixed-Use) zoning district,
- l. In the B/R-MU (Business/Residential Mixed-Use) zoning district,
- m. In the OP (Office Professional) zoning district,
- n. In the public right-of-way with the closest adjacent district being GI (General Industrial) zoning district,
- o. In the public right-of-way with the closest adjacent district being LI (Light Industrial) zoning district,
- p. In the public right-of-way with the closest adjacent district being RC (Regional Commercial) zoning district,
- q. In the public right-of-way with the closest adjacent district being C/I-MU (Commercial/Industrial Mixed-Use) zoning district,
- r. In the public right-of-way with the closest adjacent district being HC (Highway Commercial) zoning district,
- s. In the public right-of-way with the closest adjacent district being HC (Highway Commercial) land use designation in the Colonies Specific Plan,
- t. In the public right-of-way with the closest adjacent district being C/O-MU (Commercial/Office Mixed-Use) zoning district,

- u. In the public right-of-way with the closest adjacent district being NC (Neighborhood Commercial) zoning district,
 - v. In the public right-of-way with the closest adjacent district being NC (Neighborhood Commercial) land use designation in the Colonies Specific Plan,
 - w. In the public right-of-way with the closest adjacent district being the Commercial land use designation in the Park View Specific Plan,
 - x. In the public right-of-way with the closest adjacent district being C/R-MU (Commercial/Residential Mixed-Use) zoning district,
 - y. In the public right-of-way with the closest adjacent district being B/R-MU (Business/Residential Mixed-Use) zoning district,
 - z. In the public right-of-way with the closest adjacent district being OP (Office Professional) zoning district,
 - aa. In the public right-of-way with the closest adjacent district being the RM (Residential Multi-family) zoning district,
 - bb. Any public right-of-way location that abuts the property line of a structure within a designated local, State or federal historic district,
 - cc. Any parcel or right-of-way within 500 feet of a school site.
3. Support Structures in Public Rights-of-Way. The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- a. Existing or replacement streetlight poles;
 - b. New, non-replacement streetlight poles;
 - c. New or replacement traffic signal poles;
 - e. New, non-replacement poles;
 - f. Existing or replacement wood utility poles.
4. Prohibited Support Structures in Public Rights-of-Way. The City prohibits small wireless facilities to be installed on the following support structures:
- a. Decorative poles;

- b. Signs;
- c. Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;
- d. New, non-replacement wood poles.
- e. Any pole mounted facility within 1,500 of an existing pole mounted facility.

N. Design Standards for all Small Wireless Facilities

1. Noise. Noise emitted from small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable City noise control standards.
2. Lights. Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.
3. Landscape Features. No small wireless facility shall encroach into the protected zone of any designated heritage or landmark tree. Small wireless facilities shall not displace any other existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscaping and landscape maintenance must be performed in accordance with all applicable provisions of the Upland Municipal Code.
4. Site Security Measures. Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

5. Signage; Advertisements. All small wireless facilities must include signage not to exceed one (1) square feet in sign area that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.
 6. Compliance with Health and Safety Regulations. All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.).
 7. Overall Height. Small wireless facilities must comply with the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95 and 128).
- O. Design Standards for Small Wireless Facilities within Public Rights-of-Way.
1. Antennas.
 - a. Concealment. All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
 - b. Antenna Volume. Each individual antenna may not exceed three cubic feet in volume.
 2. Accessory Equipment.
 - a. Installation Preferences. All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.

- b. **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced. The Noise restrictions apply to underground equipment as well, especially ventilation/cooling equipment.
- c. **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- d. **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- e. **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
- f. **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in

connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

3. Streetlights. Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the design(s) for small wireless facilities on streetlights described in the City's Road Design and Construction Standards. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
4. Wood Utility Poles. Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas in a radome above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the radome and stand-off bracket. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
5. New, Non-Replacement Poles. Applicants that propose to install a small wireless facility on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
6. Encroachments over Private Property. Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
7. Backup Power Sources. Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power

generators used in an emergency declared by federal, state or local officials.

8. **Obstructions; Public Safety and Circulation.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; (F) access to any fire escape or (G) above ground improvements must be setback a minimum of 2 feet from existing or planned sidewalks, trails, curb faces or road surfaces.
9. **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. 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.
10. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
11. **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal unless required by the utility company.
12. **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole

cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

13. Lines of Sight. No wireless facility shall be located so as to obstruct pedestrian or vehicular lines-of-sight.

P. Design Standards for Small Wireless Facilities Outside of Public Rights-of-Way.

1. Setbacks. Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
2. Backup Power Sources. The Director shall not approve any diesel generators or other similarly noisy or noxious generators in or within 200 feet from any residence; provided, however, the Director may approve sockets or other connections used for temporary backup generators.
3. Parking; Access. Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
4. Freestanding Small Wireless Facilities. All new poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
5. Small Wireless Facilities on Existing Buildings.
 - a. All components of building-mounted wireless facilities must be completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas. Examples include, but are not limited to, antennas and wiring concealed behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials.
 - b. If the applicant demonstrates with clear and convincing evidence that integration with existing building features is technically infeasible, the applicant may propose to conceal the wireless facility within a new

architectural element designed to match or mimic the architectural details of the building including length, width, depth, shape, spacing, color, and texture.

6. Small Wireless Facilities on Existing Lattice Tower Utility Poles.
 - a. Antennas must be flush-mounted to the side of the pole and designed to match the color and texture of the pole. If technologically infeasible to flush-mount an antenna, it may be mounted on an extension arm that protrudes as little as possible from the edge of the existing pole provided that the wires are concealed inside the extension arm. The extension arm shall match the color of the pole.
 - b. Wiring must be concealed in conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
 - c. All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the structures on which they are mounted. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
 - d. No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.

7. Small Wireless Facilities on Existing Wood Utility Poles.
 - a. All antennas must be installed within a cylindrical shroud (radome) above the top of the pole unless the applicant demonstrates that mounting antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record.
 - b. All antennas must be concealed within a shroud (radome) designed to match the color of the pole, except as described in (8) (E).
 - c. No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.
 - d. If it is technically infeasible to mount an antenna above the pole it may be flush-mounted to the side of the pole. If it is technically infeasible to flush-mount the antenna to the side of the pole it may be installed at the top of a stand-off bracket/extension arm that protrudes as little as possible beyond the side of the pole. Antenna shrouds on stand-off brackets must be a medium gray color to blend in with the daytime sky.

- e. Wires must be concealed within the antenna shroud, extension bracket/extension arm and conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
 - f. All accessory equipment must be placed underground, unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the pole. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
8. Small Wireless Facilities on Existing Water Reservoirs.
- a. Antennas must be mounted as close as possible to the side of the reservoir.
 - b. No antenna or accessory equipment shall project above the top of the reservoir.
 - c. Wires must be concealed within a shroud or conduit that is flush-mounted to the reservoir. The conduit and mounting hardware shall match the color of the reservoir.
 - d. Antennas and antenna shrouds shall be painted to match the color of the reservoir.
 - e. All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground equipment cabinets, if any, shall be dark green in color.
 - f. All water reservoir installations must also be approved by the Water District having jurisdiction/ownership.

17.40.170 Business license.

A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise required under the Upland Municipal Code.

17.40.180 Emergency deployment and Temporary uses.

- A. In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that the Director deems to constitute an emergency, the Director may approve the installation and operation of a temporary wireless

telecommunications facility (e.g., a cell on wheels or “COW”), which is subject to such reasonable conditions that the Director deems necessary.

- B. A temporary telecommunication facility may be deployed subject to approval of a Temporary Use Permit by the Development Services Director or designee subject to the following:
1. A construction permit has been issued for modifications to an existing wireless communications facility, or an existing wireless telecommunication facility is in need of necessary repairs that does not require a construction permit and a temporary wireless communication facility is needed to maintain service to residents in order to ensure public health welfare and safety.
 2. The facility can be deployed for no more than 14 days, unless the facility is approved in conjunction with a construction permit, in which case a temporary facility can be deployed for no more than 6 months, provided that two extensions may be granted by the Development Services Director; however, the total period shall not exceed 1 year.

17.40.190 Operation and maintenance standards.

- A. All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:
1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 2. After permittee, owner, operator, or any designated maintenance agent receives notification from a resident or the Director.
- B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored, or damaged artificial foliage or other camouflage;
 6. Graffiti, bills, stickers, advertisements, litter and debris;

7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Director.
 - D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.
 - F. Each facility shall be operated and maintained to comply at all times with the noise regulations of this chapter and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the Director. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
 - G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
 - H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

17.40.200 No dangerous conditions or obstructions allowed.

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

17.40.200 Cessation of use or abandonment.

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 10 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Director of any discontinuation of operations of 30 days or more.
- C. Failure to inform the Director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
 - 1. Prosecution;
 - 2. Revocation or modification of the permit;
 - 3. Calling of any bond or other assurance required by this chapter or conditions of approval of the permit;
 - 4. Removal of the facilities by the City in accordance with the procedures established under the Upland Municipal Code for abatement of a public nuisance at the owner's expense; and
 - 5. Any other remedies permitted under the Upland Municipal Code.

17.40.210 Permit expiration.

- A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the Planning Commission authorizes a longer period or pursuant to another provision of the Upland Municipal Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of no more than 10 years and no sooner than 12 months prior to expiration of the permit.
- C. If a permit has not expired at the time an application is made for an extension, the Director may administratively extend the term of the permit for subsequent 10-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of the Upland Municipal Code that are in effect at the time the permit extension is granted.

1. At the Director's discretion, additional studies and information may be required of the applicant.
 2. If the Director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the Upland Municipal Code that are then in effect at the time of permit expiration, the Director shall refer the extension request to the Planning Commission.
- D. The request for an extension shall be decided by the Planning Commission if the permit expired before the application is made for an extension or if the Director refers the matter to the Planning Commission. After notice and a public hearing, the Planning Commission may approve, conditionally approve, or deny the extension.

17.40.230 Removal and restoration, permit expiration, revocation or abandonment.

- A. Permittee's Removal Obligation. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.
- B. Failure to Remove. Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 30 days after expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the Upland Municipal Code, and be grounds for:
1. Prosecution;
 2. Calling of any bond or other assurance required by this chapter or conditions of approval of permit;
 3. Removal of the facilities by the City in accordance with the procedures established under the Upland Municipal Code for abatement of a public nuisance at the owner's expense; or
 4. Any other remedies permitted under the Upland Municipal Code.
- C. Summary Removal. In the event the Director determines that the condition or placement of a wireless telecommunications facility located in the public right-of-

way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), the Director may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

- D. Removal of Facilities by City. In the event the City removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with the Upland Municipal Code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee nor the owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due to exigent circumstances.

17.40.240 Effect on other ordinances.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the Upland Municipal Code, including, but not limited to, obtaining any necessary encroachment or building permits. In the event of a conflict between any provision of this chapter and other provisions of the Upland Municipal Code, this chapter shall control.

17.40.250 Effect of state or federal law.

In the event that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, the permits required by this chapter for those facilities shall be deemed to be ministerial permits. For those facilities, in lieu of a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility and all provisions of this chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary permit. Any conditions of approval set forth in this chapter or deemed necessary by the Director shall be imposed and administered as reasonable time, place and manner rules.

**Exhibit B – Current Section 17.40
Wireless Telecommunications**



Chapter 17.40 TELECOMMUNICATION FACILITIES

Sections:

17.40.010	Purpose
17.40.020	Applicability
17.40.030	Definitions
17.40.040	Authority
17.40.050	Permitted Zones and Permits Required
17.40.060	Exceptions
17.40.070	Site Criteria
17.40.080	Design and Performance Standards
17.40.090	Temporary Uses
17.40.100	Application Process
17.40.110	Cash Bond Requirement
17.40.120	Discontinued Use
17.40.130	Abandonment

17.40.010 Purpose

The purpose of this chapter is to establish regulations and guidelines for telecommunication facilities. The regulations are designed to protect and promote the public health, safety, and general welfare and quality of life in the City.

17.40.020 Applicability

- A. This chapter shall apply to applications for telecommunication facilities, including administrative, minor, and major telecommunication facilities.
- B. This chapter does not apply to government owned telecommunication facilities utilized for a public purpose.
- C. In the event of any inconsistency between regulations in this chapter and those outside of this chapter, the provisions of this chapter shall govern.

17.40.030 Definitions

“Telecommunication Facility,” “Wireless Communication Facility,” or “Facility” means a facility consisting of any commercial antenna, monopole, microwave dish or other related equipment necessary to the transmission or reception of cellular, personal communication service, or data radio communications, and which has been granted a certificate of public convenience and necessity, or a wireless registration number by the California Public Utilities Commission, or otherwise provides wireless communications services to the public. Specific types of telecommunication facilities are defined as follows:

- A. “Administrative Telecommunication Facilities” means voice telecommunication systems and/or circuits that are planned, managed, and used to conduct the business. This includes telephone

handsets, video/audio teleconferencing equipment, customer premise equipment, cellular telephones, facsimile machines, pagers and related devices installed in offices and used primarily for administrative purposes.

- B.** “Minor Telecommunication Facilities” means a wireless telecommunication facility subject to review by the Development Services Director that is designed to be building-mounted, or co-located on an existing structure with other facilities or wireless communications service providers.
- C.** “Major Telecommunication Facilities” means a communication facility subject to review by the Planning Commission. Major telecommunication facilities are facilities not clearly set forth and included in the definition of an administrative telecommunication facility or a minor telecommunication facility. Examples of major telecommunication facilities may include, but are not limited to, monopoles and other freestanding towers.

17.40.040 Authority

- A.** The review and decision-making authority for telecommunication facilities shall depend on the type of facility and permit required for the zone in which the telecommunication facility is proposed. Table 17.40-1 below identifies required permits for each type of telecommunication facilities in different zones. Refer to Part 5 (Land Use and Development Approval Procedures) of the Zoning Ordinance for permit application procedures.
- B.** The review authority shall be guided by the provisions of this chapter when reviewing a telecommunication facility application in addition to the standards of the zone in which the telecommunication facility is proposed.
- C.** Approval granted under this chapter shall not:
 1. Confer any exclusive right, privilege, license, or franchise to occupy or use the public ways of the City for delivery of telecommunication services or any other purposes.
 2. Convey any right, title, or interest in the public ways, but shall be deemed approval only to use and occupy the public ways for the limited purposes and terms stated in the approval. No approval shall be construed as any warranty of title.

17.40.050 Permitted Zones and Permits Required

Table 17.40-1 (Permits Required for Telecommunication Facilities) identifies zones where telecommunication facilities are permitted and the permits required for telecommunication facilities within the City of Upland.

TABLE 17.40-1 PERMITS REQUIRED FOR TELECOMMUNICATION FACILITIES

Key CUP Conditional Use Permit Req. AUP Admin. Use Permit Req. -- Use Not Allowed	Zones				
	Residential Zones	Mixed-Use Zones	Commercial Zones	Industrial Zones	Special Purpose Zones
Administrative Telecommunication Facilities [1][2]	[AUP]	AUP	AUP	AUP	AUP
Minor Telecommunication Facilities [1][2]	-	AUP	AUP	AUP	AUP
Major Telecommunication Facilities [1][2]	-	-	CUP	CUP	CUP

Notes:

[1] Telecommunication facilities are prohibited on sites occupied by a residential use.

[2] Telecommunication facilities shall be setback more than 200 feet from the property line of an existing residential use and/or a residential zone.

17.40.060 Exceptions

This chapter shall not apply to the following facilities:

- A. Amateur (including ham and short-wave) radio facilities, provided that the facilities do not exceed 65 feet in height or are not more than 25 feet above the height limit prescribed by the regulations for the district in which the facilities are located, whichever is less.
- B. Wireless communications facilities, which are not licensed by the Federal Communications Commission and are determined by the Development Services Director to have little or no adverse visual impact.
- C. Direct-to-home satellite services smaller than 2 feet in diameter.
- D. Any wireless communications facility located on land owned by one of the public entities listed below and operated for the public entity's public purpose only and not for commercial reasons:
 1. The United States of America or any of its agencies.
 2. The state or any of its agencies or political subdivisions of the state not required by state law to comply with local zoning ordinances.
- E. The following facilities are exempt from the standards in this chapter and may be permitted if all identified standards are met:
 1. Facilities erected and operated for a public emergency situation. Uses of such facilities shall not exceed two weeks, unless an extension is granted in writing by the Development Services Director.
 2. Facilities exempted under State or federal law.
 3. Noncommercial television antennas, subject to the maximum height requirement of the zoning district as set forth in Part 2 (Zoning Districts, Land Uses, and Development Standards).

4. Noncommercial satellite dishes no greater than 3 feet in diameter.
5. Temporary wireless telecommunication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up for a maximum of 24 hours.

17.40.070 Site Criteria

- A.** Telecommunication facilities shall be located in the following order of preference:
1. Completely within existing structures with the facility designed to be an integral architectural feature of the structure.
 2. Completely within a new structure constructed to accommodate telecommunication facilities.
 3. Co-located with other major telecommunication facilities.
 4. On existing structures such as buildings, communication towers, or utility facilities.
 5. On existing signal, power, light, or similar kinds of poles.
- B.** New freestanding telecommunication facilities shall not be located within 1,000 feet of an existing freestanding telecommunication facility unless:
1. Stealth techniques are used to minimize the facility's visual impact, and
 2. Mounting on a building or co-location is not feasible.

17.40.080 Design and Performance Standards

A. General Criteria.

1. All telecommunication facilities shall comply with all development standards within the applicable zoning district of the subject site.
2. All accessory equipment associated with the operation of the telecommunication facility shall be located within a building, decorative enclosure, or underground vault that complies with the development standards of the subject site.
3. All telecommunication facilities shall employ camouflage design techniques to minimize visual impacts. The review authority may require alternative design techniques in the event that camouflaged design techniques are deemed ineffective or inappropriate.
4. All telecommunication facilities shall be concealed or screened by existing or proposed topography, vegetation, buildings, or other structures.
5. The size of telecommunication facilities shall be in proportion to their surrounding and supporting structures.

B. Height.

1. Telecommunication facilities shall not exceed the maximum building height for the applicable district unless the facility is designed to accommodate two or more wireless communication providers.
2. When sites are adjacent to residential uses or residentially zoned properties, an antenna may exceed the height limit by up to 200 percent, subject to the following criteria:
 - a. The property must be a non-residential use.
 - b. If the height of the tower exceeds the height limitation of the district in which it is located it must be set back an additional 10 feet from the setback line for every 10 feet added to the height.
3. The Planning Commission may consider approval of facilities that are proposed to exceed the maximum height limit where two or more wireless providers are proposed to locate, subject to the review and approval of a major wireless communication facility permit. Two or more providers must apply for the permit as co-applicants at the time the original entitlement is processed.
4. The height of a structure supporting a telecommunication facility shall be in proportion and relate to other nearby structures.

C. Lighting.

1. Telecommunication facilities shall not be lighted except for security lighting at the lowest intensity necessary.
2. Lighting shall be shielded so that direct rays do not shine on nearby properties.

D. Signs.

1. Advertising signage or identifying logos shall not be displayed on any telecommunication facility.
2. Information plates such as name, address, and warning signs shall be identified in the telecommunication application and shall be subject to approval by the review authority.

E. Maintenance.

1. All graffiti on any part of the telecommunication facility shall be removed immediately.
2. All landscaping required for telecommunication facilities shall be maintained at all times.
3. All telecommunication facilities shall be kept clean and litter free.

17.40.090 Temporary Uses**A.** A temporary telecommunication facility may be deployed subject to approval by the Development Services Director or designee and the following:

1. A permanent telecommunication facility has been approved for the property in question,

2. The temporary facility was approved previously as part of a conditional or administrative use permit, and
3. The facility is deployed for no more than 6 months, provided that two extensions may be granted by the Development Services Director; however, the total period shall not exceed 1 year.

17.40.100 Application Process

A. Submittals.

1. For all proposed telecommunication facility, the telecommunication facility provider, including providers establishing co-location services, shall provide the following to the Development Services Department:
 - a. *Architectural and Site Review Application.* A completed Administrative Use or Conditional Use application that includes the signature of the wireless communications provider and the property owner.
 - b. *Fees.* All applicable fees.
 - c. *Title Reports.* Title reports may be obtained from the San Bernardino County assessor's office.
 - d. *Site Plan.* Provide a site plan drawn to a measurable scale, showing the metes and bounds of the property, the location of existing features of the site including existing structures, roads, landscaping, trees, and other significant natural and constructed features. The site plan shall also show the location of each new structure to be located on the site including telecommunication antennas, base transceiver stations, equipment cabinets and buildings and appurtenant structures including screening.
 - e. *Service Gap Map.* Provide a map demonstrating that the proposed facility is necessary to fill in a service gap.
 - f. *Elevations.* Provide elevations of all proposed communication structures and appurtenances and composite elevations from the street of all structures on-site.
 - g. *Section Drawings.* Provide section drawings (elevations) of all proposed communication structures and appurtenances and composite elevations from the street of all structures on-site.
 - h. *Visual Analysis.* A visual impact analysis including scaled elevation diagrams within the context of the building, before and after photo simulations from various locations and/or angles from which the public would typically view the site, and a map depicting where the photos were taken. Where the installation would be readily visible from the public right-of-way or from surrounding properties, the application shall include an explanation as to why, if screening or other techniques to minimize visibility are not proposed, such approaches to reduce the visibility of the installation would not be effective. The Development Services Director may require the submission of photo overlays, scaled models, renderings, and/or field mock-ups to assess any potential visual impact including proper coloration and blending of the facility with the proposed site.
 - i. *Landscape Plan.* A landscape plan may be required that shows existing vegetation, indicating any vegetation proposed for removal, and identifying proposed plantings by type, size, and

location. This may be required depending on the potential visual impacts of ground-mounted equipment. If deemed necessary by the Development Services Director, an arborist's report may be also required to verify that the existing landscaping will not be adversely affected by the installation of the facility. The arborist's report may recommend protective measures to be implemented during construction.

- j. *Existing and Future Facilities Map.* A map, to scale, of the telecommunication facilities provider's existing and planned facilities and service area(s), including information about the location, height and design, coverage, and significant gaps within the city limits and within one-half mile therefrom.
- k. *Miscellaneous and Appurtenant Structures.* Show in all relevant plans all facility related structures and support equipment to be installed. This includes, but is not limited to, the location(s) and method(s) of placement, support, protection, screening, paint and/or other treatments of the antennas, base transceiver stations, equipment cabinets and buildings, cables, and other appurtenances.
- l. *Screening Techniques.* A statement describing the proposed means of visually screening unsightly public views of facilities, as needed, including submittals of sample exterior materials and colors of towers, antennas, accessory structures (such as equipment cabinets and structures), and security fences. This statement should include a justification of why the proposed height and visual impact of the wireless communications facility cannot be reduced.
- m. *Equipment Inventory.* The number, type and dimensions of antennas, equipment cabinets, and related facilities proposed for use by the wireless communications provider. The size of equipment cabinets and related facilities are not required if the cabinets and related facilities are located completely underground or entirely within a building, not including an equipment cabinet.
- n. *Site Selection Process.* A letter indicating whether, and why, each site identified is essential for completion of the wireless communications provider's coverage objective. This letter should describe the site selection process including information about other sites which were considered that could service the same or similar coverage area and the reasons for their rejection.
- o. *Co-location.* A statement of whether the facility could be co-located elsewhere and, if not, why colocation is not being proposed, and additionally state that the wireless communications provider's commitment to allow other wireless communications providers to co-locate antennas on their proposed facilities wherever structurally and technically feasible, to demonstrate how the facilities have been designed to allow co-location of other carriers (if applicable), and to provide at any time additional information, as requested by the Development Services Director, to aid in determining whether or not another wireless communications provider could co-locate on/near their facilities if approved.
- p. *FCC Compliance.* A report prepared by a certified professional radio frequency engineer:
 - 1) Stating the power rating for all antennas and backup equipment proposed.
 - 2) Verifying that the system, including the antennas, and associated equipment cabinets/structures, conforms to the non-ionizing electromagnetic radiation (NIER)

standards adopted by the Federal Communications Commission, including operating within its frequency assigned by the Federal Communications Commission.

- 3) Confirming that operation of the facilities, both individually and cumulatively if located adjacent to other wireless communications facilities, will not exceed all adopted Federal Communications Commission standards.
 - 4) Confirming that the proposed wireless communications facility shall be operated in a manner which complies with the Federal Communications Commission's regulations regarding signal interference.
 - 5) Presenting FCC compliance information in a concise and easy-to-read format that clearly demonstrates in a nontechnical manner the current site conditions, conditions with the proposed project, and FCC thresholds as they relate to all applicable emissions standards.
- q. *Easements.* Provide information about any necessary easements.
- r. *Safety/Security Plan.*
- 1) A detailed description of the proposed measures to ensure that the public would be kept at a safe distance from any NIER transmission source associated with the proposed wireless communications facility, consistent with the NIER standards of the FCC or any potential future superceding standards.
 - 2) The submitted plans must show that the outer perimeter of the facility site (or NIER hazard zone in the case of rooftop antennas) will be posted with bilingual NIER hazard warning signage that also indicates the facility operator and an emergency contact who is available on a twenty-four-hour a day basis and is authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
- s. *Financial Guarantee.* A financial guarantee, satisfactory to the city manager, for the removal of the facility in the event that its use is abandoned, or its approval is terminated.
- t. *Maintenance Program.* A letter to the Development Services Director, which describes in detail the maintenance program for the facilities.

B. The Development Services Director or Planning Commission may require the applicant to submit additional documentation, which the Director deems necessary to evaluate the proposed site or facility, including but not limited to the following:

1. *Other Agency Permits and Licenses.* Information sufficient to determine that the wireless communications provider has applied for and received all applicable operating licenses or other approvals required by the Federal Communications Commission and California Public Utilities Commission to provide wireless communications within the city.
2. *Alternative Equipment Configuration.* The types and range of sizes of antennas and equipment cabinets, which could serve as alternatives for use by the wireless communications provider.
3. *Topographic Map.* A USGS topographic map or survey, to scale, with existing topographic contours showing the proposed antennas, accessory structures, and new roads in an area.
4. *Site Selection Data.* Technical data related to the site selection process.

5. *Noise Impact Analysis.* Provide noise and acoustical information for the base transceiver stations, equipment buildings and associated equipment such as air conditioning units and back-up generators.
6. *Proof of Irrigation Facilities.* Written proof of the availability of any required irrigation facilities on-site prior to permit issuance. This may be in the form of a letter from the owner of the land allowing the wireless communications provider the use of required water facilities for landscaping.
7. *Director's Review.* The Development Services Director may require an independent review, paid for in advance by the applicant, to evaluate the applicant's request. Factors to be considered are:
 - a. Whether or not another site exists where the standards can be met;
 - b. Whether there is another method of installation that would result in a project that complies with the standards;
 - c. Whether the addition of another wireless telecommunication facility would allow the reduction in height of the proposed facility; and
 - d. Whether there is any other technically feasible method of siting the facility that would reduce the height.

17.40.110 Cash Bond Requirement

- A.** Prior to finalizing a building permit for the construction or modification of a telecommunication facility, the applicant shall be required to provide to the City a cash bond or other security approved by the building official and City Attorney for the removal of the facility and any accessory equipment and the rehabilitation of the site if the facility is abandoned.
- B.** The security amount shall be determined by the chief building official.
- C.** If the security lapses, the City reserves the right to place a lien on the property that amounts to the cost of the removal of the facility and rehabilitation of the site.
- D.** The City Clerk shall cause the lien to be recorded with the San Bernardino County Recorder.

17.40.120 Discontinued Use

- A.** Any telecommunication facility operator who intends to discontinue use of a telecommunication facility must notify the Development Services Director by certified mail at least 30 days prior to such action.
- B.** Unless determined otherwise by the Development Services Director, the telecommunication facility operator shall have 90 days from the date of discontinuance to complete one of the following:
 1. Reactivate use of the telecommunication facility.
 2. Transfer the rights to use the telecommunication facility to another operator, who immediately commences use.
 3. Remove the telecommunication facility and restore the site.

17.40.130 Abandonment

- A.** A telecommunication facility that is not operated for a continuous period of 90 days shall be considered abandoned.
- B.** An abandoned telecommunication facility shall be promptly removed in accordance with the proper health and safety requirements and all ordinances, rules, and regulations of the City.
- C.** A written notice of the determination of abandonment shall be sent by certified mail, or personally delivered, to the telecommunication facility operator or the operator's business address on file.
- D.** The operator shall remove all facilities within 30 days of the date of the determination of abandonment notice.
 - 1. The operator can appeal such determination, in writing, to the Planning Commission within 10 business days of the date of the notice.
 - 2. The Development Services Director shall schedule a hearing before the Planning Commission, at which time the operator may present evidence on the issue of abandonment.
 - 3. The Planning Commission may affirm, reverse, or modify, with or without conditions, the original determination of abandonment and shall make written findings in support of its decision. The decision of the Planning Commission shall be final.
- E.** Any telecommunication facility determined to be abandoned and not removed within the 30-day period from the date of notice shall be in violation of this chapter.
- F.** The operator of an abandoned facility shall be subject to the penalties prescribed herein.