

ORDINANCE 2021-09

AN ORDINANCE OF THE CITY OF MONROVIA, CALIFORNIA, AMENDING TITLE 12, "STREETS, SIDEWALKS AND PUBLIC PLACES" OF THE MONROVIA MUNICIPAL CODE BY ADDING CHAPTER 12.52 ENTITLED "WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY" TO ESTABLISH REGULATIONS AND STANDARDS PERTAINING TO WIRELESS TELECOMMUNICATIONS FACILITIES INSTALLATIONS IN THE PUBLIC RIGHTS-OF-WAY, AND AMENDING SECTION 5.48.320 OF CHAPTER 5.48 OF TITLE 5 OF THE MONROVIA MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA does ordain as follows:

SECTION 1. Recitals

A. The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards, regulations and permit requirements for the deployment and installation of small wireless facilities, eligible facilities, and other wireless telecommunications facilities in the public rights-of-way.

B. Over the past several years there have been significant changes in the types of wireless telecommunication facilities used to provide communications services within the City, and federal and state laws have been modified regarding the regulation of wireless telecommunications facilities in the public rights of way and other property.

C. On September 27, 2018, the Federal Communications Commission ("FCC") adopted its Declaratory Ruling and Third Report and Order, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 83 FR 51867-01 (published in the Federal Register on October 15, 2018) [hereinafter "2018 Report and Order"] relating to placement of small wireless facilities in public rights-of-way. The Report and Order took effect on January 14, 2019, and unless stayed by court or legislative action, or by further action by the FCC, states and local governments must comply with its terms.

D. The ability of local agencies to regulate use of their rights-of-way for deployment of small wireless facilities is substantially limited under the 2018 Report and Order. The 2018 Report and Order purports to give providers of wireless telecommunications services rights to utilize public rights-of-way and to attach so-called "small wireless facilities" to public infrastructure within the public rights-of-way, including infrastructure of the City of Monrovia ("City"), subject to payment of "presumed reasonable", non-recurring and recurring fees. The 2018 Report and Order also limits the types of aesthetic standards that may be adopted on small wireless facilities. In *City of Portland v. United States* (9th Cir. 2020) 969 F. 3d 1020, the Ninth Circuit Court of Appeals upheld one provision requiring that aesthetic requirements must be reasonable, but invalidated a requirement that aesthetic requirements be no more burdensome than those imposed on providers of equivalent services, as exceeding the FCC's authority; and also invalidated a requirement that aesthetic requirements must be objective because this standard is unduly vague.

E. Notwithstanding the limitations imposed on local regulation of small wireless facilities in the public rights-of-way by the 2018 Report and Order, local agencies retain the ability to regulate

the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; and are (ii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements.) Additional guidance as to the scope of the 2018 Report and Order may come from other court decisions in the future.

F. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. Section 1455(a) (“Section 6409(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. FCC regulations interpret this statute and establish 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 as 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.).

G. In addition to Section 6409(a), the 2018 Ruling and Order and the 2020 Final Rule, state and federal laws have changed substantially since the City last adopted regulations for wireless telecommunications facilities in the public rights-of-way. Such changes include modifications to federal and state “shot clocks” whereby the City must approve or deny permit applications within a certain period of time. State and federal laws require local governments to issue final decisions on permit applications for eligible facilities within a prescribed time period and may automatically deem an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 CFR §§ 1.6100 et seq.; Cal. Gov’t Code § 65964.1. The FCC may require a decision on certain wireless telecommunications facility applications and/or eligible facility applications in as few as 60 days. See 447 C.F.R. § 1.6100(c)(1); 47 C.F.R. § 1.61003(c)(1)(i); see also 2018 Report and Order; Ruling and Order, 83 FR 51867-01, 51885-51886; *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order*, 29 FCC Rcd. 12865 (Oct. 17, 2014) [hereinafter “2014 Report and Order”]; *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Declaratory Ruling*, 24 FCC Rcd. 13994 (Nov. 18, 2009) [hereinafter “2009 Declaratory Ruling”]. Pursuant to FCC regulations, the City cannot adopt a moratorium ordinance to toll the time period for review for certain types of facilities, even when needed to allow the City to maintain the status quo while it reviews and revises its policies for compliance with changes in state or federal law. See 47 C.F.R. § 1.6100(c)(3); Ruling and Order, 83 FR 51886; 2014 Report and Order, 29 FCC Rcd. at 219, 265.

H. In addition, Assembly Bill (“AB”) 2421 was adopted by the Legislature and signed by the Governor in 2020, to add Section 65850.74 of the California Government Code. AB 2421 became effective January 1, 2020, and by its express terms will remain in effect until January 1, 2024, and as of that date is repealed. Under AB 2421, local agencies are required to make the installation of an emergency standby generator to serve a macro cell tower site, as defined, that meets specified requirements a permitted use and require a local agency to review an application for installation on an administrative, nondiscretionary basis. Government Code Section 65850.75 also specifies procedures for the processing of permit applications by a local agency and authorizes a local agency to impose a fee to cover costs of administration.

I. Notwithstanding these federal and state statutes and regulations, local agencies retain the ability to regulate small wireless facilities, eligible facilities and other wireless telecommunications facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers.

J. The City of Monrovia has been receiving applications for small cell wireless telecommunications facilities and eligible facilities to be located within the public rights-of-way.

K. Installation of small cell and other wireless telecommunications facilities within the public rights-of-way poses threats to the public health, safety and welfare, including land use conflicts and incompatibilities, such as excessive height of poles and towers; creation of visual and aesthetic blight and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless telecommunications facilities and the associated pedestals, meters, equipment and power generators; creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City; causes substantial disturbance to rights-of-way through the installation and maintenance of wireless telecommunications facilities; creates traffic and pedestrian safety hazards due to the unsafe location of wireless telecommunications facilities and impairment of accessible paths of travel; and, negatively impacts City street trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines.

L. The Monrovia Municipal Code currently regulates wireless telecommunications facilities in the public rights-of-way through the requirement for a minor conditional use permit (mCUP) process in preferred locations and a conditional use permit (CUP) process in discouraged locations in Title 17 (Zoning), requirements for encroachment/excavation permits and overall policies directed at telephone corporations in the public rights-of-way in Title 12 (Streets, Sidewalks and Public Places). The existing standards have not been updated to reflect current telecommunications trends or compliance with federal and state legal requirements.

M. The public rights-of-way in the City of Monrovia are a uniquely valuable public resource, closely linked with the City's natural beauty being located at the foothills of the San Gabriel Mountains and having a significant number of residential communities including many historically landmarked residences and Historic Districts. The public rights-of-way in the City's Old Town are historically significant as an example of a commercial downtown developed along and near historic streetcar lines in the late Nineteenth Century with many buildings still standing and preserved. The public-rights-of-way in the City include a portion of the Historic Route 66, which crosses eight states from Chicago to Los Angeles, and includes Huntington Drive, Shamrock Avenue and Foothill Boulevard in the City and is another valuable public resource. The historic service station on Shamrock Avenue and the Aztec Hotel, a local and national historical landmark on Foothill Boulevard are architectural examples due to the advent of the automobile at the beginning of the Twentieth Century. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public rights-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community. The regulations of wireless telecommunications installations in the public rights-of-way are also necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.

N. The City desires ensure to the greatest extent allowed under federal state law that wireless telecommunication 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

O. The City deems it necessary and appropriate to adopt standards and regulations relating to the location, design, installation, construction, maintenance, and operation of wireless telecommunication facilities, including towers, antennas, and other structures in the public rights-of-way and to provide for the enforcement of these standards and regulations consistent with federal and state legal requirements;

P. It is the intent of the City Council in adopting this Ordinance to supersede regulations of the City that conflict with Section 6409(a), the 2018 Report and Order, the 2020 Final Rule, and Government Code Sections 65860.75, and to establish consistent regulations governing deployment of wireless telecommunications facilities in the public rights-of-way, in order to more fully protect the public health, safety, and welfare. The City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to reenact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of Section 6409(a), the 2018 Report and Order, the 2020 Final Rule, and Government Code Section 65860.75 in the event any of these federal and state regulations are invalidated, modified, or limited in any way.

Q. The City recognizes its responsibilities under these federal and state laws, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; but rather, includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under federal and state laws while, at the same time, protecting to the fullest extent feasible against the safety and land use concerns described herein.

R. By separate action the City will amend Title 17, Zoning, Chapter 17.46, "Wireless Telecommunications Facilities" to remove regulation of the public rights-of-way in the City from the Zoning Code, and to amend Chapter 17.46 to incorporate standards, rules and requirements for private property and public property outside of the public rights-of-way, that are consistent with Section 6409(a), the 2018 Report and Order, 2020 Final Rule, and Government Code Section 65850.75.

S. All legal prerequisites to the adoption of the Ordinance have occurred.

SECTION 2. At the duly noticed City Council meeting held on _____, 2021, the City Council of the City of Monrovia considered this proposed ordinance to amend Title 12 "Streets, Sidewalks and Public Places" by adding Chapter 12.52 entitled "Wireless Facilities in the Public Rights-of-Way"; and to repeal existing Section 5.48.320, "Wireless Telecommunications Facilities" of Title 5, "Telecommunications Regulations" and replace it with the provisions set forth herein. At that time, the City Council received and considered the staff report and all the information, evidence, and testimony presented in connection with this ordinance.

SECTION 3. Environmental Review

A. Pursuant to the California Environmental Quality Act ("CEQA") and the City's local CEQA Guidelines, City staff determined that Ordinance 2021-09 is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. City staff found that there is no possible significant effect directly related to Ordinance 2021-09 ("project"); therefore, no further action is required under CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 CCR § 15061(b)(3)). The City Council has reviewed the project and based upon the whole record before it, in the exercise of its independent judgment and analysis, concurs that City staff has correctly concluded that it can be seen with certainty that there is no possibility the proposed amendments to the Municipal Code and the effects derivative from that

adoption may have a significant effect on the environment, because the provisions of this Ordinance provide similar regulations as currently exist, are required to comply with state and federal law, and will not in and of themselves cause any change in the environment.

B. The custodian of records for all materials that constitute the record of the proceedings upon which this decision is based is the City Clerk. Those documents are available for public review in the City Clerk's office located at 415 South Ivy Avenue, Monrovia, California, 91016.

SECTION 4. Section 5.48.320, "Wireless Telecommunications Facilities" of Chapter 5.48, "Telecommunications Regulations" of Title 5, "Telecommunications Regulations" of the Monrovia Municipal Code is hereby amended in its entirety to read as follows:

§ 5.48.320 WIRELESS TELECOMMUNICATIONS FACILITIES.

Notwithstanding any other provision of this chapter, the following provisions shall apply to wireless telecommunication facilities:

(A) **Public Rights-of-Way.** The provisions of Chapter 12.52, "Wireless Telecommunications Facilities in the Public Rights-of-Way" of Title 12, "Streets, Sidewalks and Public Places," governing small wireless telecommunications facilities, wireless telecommunications collocation facilities, eligible facilities, and major wireless facilities (including but not limited to macro-cell sites), as defined in Chapter 12.52 of this code, shall apply to such facilities which in whole or in part, itself or as part of another structure, rests upon, in or over the public right-of-way, including, but not limited to, any such facility owned, controlled, operated or managed by a telephone corporation.

(B) **Other Public Property.** All wireless telecommunications facilities and wireless telecommunications collocation facilities which in whole or in part, itself or as part of another structure, rests upon, in or over any public property outside of a public right-of-way, shall be regulated by Chapter 17.46, "Wireless Telecommunications and Facilities" of Title 17, "Zoning", of the municipal code.

(C) **Private Property.** The provisions of Chapter 17.46, "Wireless Telecommunications Facilities" of Title 17, "Zoning", shall apply to all wireless telecommunications facilities and wireless telecommunications collocation facilities which in whole or in part, itself or as part of another structure, rests upon, in, or over private property, or any such facility owned, controlled, operated or managed by a telephone corporation, on private property.

SECTION 5. Title 12 "Streets, Sidewalks and Public Places" of the Monrovia Municipal Code is hereby amended by adding Chapter 12.52 "Wireless Facilities in the Public Rights-of-Way," which shall read in its entirety as follows:

CHAPTER 12.52

WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

Sections:

- 12.52.010** Purpose
- 12.52.020** Definitions
- 12.52.030** Applicability
- 12.52.040** General Requirements for Wireless Telecommunications Facility Permits

- 12.52.050** Application Procedures and Requirements
- 12.52.060** Design, Aesthetic and Development Standards
- 12.52.070** Standard Conditions of Approval
- 12.52.080** Director Decision on Wireless Telecommunications Facility Permit Applications
- 12.52.090** Findings
- 12.52.100** Exceptions, Director Findings
- 12.52.110** Nonexclusive Grant
- 12.52.120** Business License
- 12.52.130** Temporary Small Wireless Facilities
- 12.52.140** Operation and Maintenance Standards
- 12.52.150** Radio Frequency (RF) Emissions and Other Monitoring Requirements
- 12.52.160** No Dangerous Conditions or Obstructions Allowed
- 12.52.170** Permit Extension
- 12.52.180** Cessation of Use or Abandonment
- 12.52.190** Revocation or Modification, Removal.
- 12.52.200** Deemed Granted
- 12.52.210** Nonconforming Wireless Facilities
- 12.52.220** Emergency Standby Generators on Macro-Cell Tower Sites (Government Code Section 65850.75)
- 12.52.230** Power Generators on Other Major Wireless Facilities (non-Government Code Section 65850.75)
- 12.52.240** Effect on Other Ordinances
- 12.52.250** Effect of State or Federal Law
- 12.52.260** Rules and Guidelines

§ 12.52.010 PURPOSE.

(A) The purpose of this chapter is to provide a uniform and comprehensive set of standards and procedures to regulate the location, placement, installation, height, appearance, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities” or “WTFs”) in City-owned or leased public rights-of-way (PROW), consistent with City laws, applicable state and federal requirements, and changing technology. The regulations are intended to provide for the appropriate development of wireless telecommunications facilities within the PROW to meet the needs of residents, business-owners, and visitors while protecting public health and safety and preventing visual blight and degradation of the community’s aesthetic character and scenic vistas.

(B) The procedures set forth in this chapter are intended to permit WTFs in the PROW that are tailored to the type of wireless telecommunication facility that is sought. Collocation of facilities are preferred and encouraged, subject to all other provisions of this chapter.

(C) This chapter is not intended to, nor shall it be interpreted or applied to:

(1) Prohibit or effectively prohibit any wireless service provider's ability to provide wireless telecommunications services;

(2) Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate wireless telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements 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 WTFs on the basis of environmental effects of radio frequency emissions to the extent that such WTFs 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; or

(6) Otherwise authorize the City to preempt any applicable federal or state law.

(D) Due to rapidly changing technology and regulatory requirements, and to further implement this chapter, the Director may adopt policies, procedures and forms consistent with this chapter, which shall be posted on the City's website and maintained at the Department for review, inspection and copying by applicants and other interested members of the public. The Director may update the rules, policies, procedures and forms in his/her discretion to adjust for new technologies, federal and/or state regulations, and/or to improve and adjust the City's implementing regulatory procedures and requirements, and compliance therewith is a condition of approval of every wireless telecommunications facility permit (WTFP).

§ 12.52.020 DEFINITIONS.

For the purpose of this chapter, the following words and phrases have the meanings set forth below. Words and phrases not specifically defined in this chapter will be given their meaning ascribed to them in Section 17.46.020 of Chapter 17.46 of the code, or as otherwise provided in this code, Section 6409(a), the Communications Act, or any applicable federal or state law or regulation.

"Action" or "To Act" means the approval authority's grant of an application for a wireless telecommunications facility permit (WTFP) or issuance of a written decision denying an application for a WTFP pursuant to this chapter.

"Administrative review" means a ministerial review of an application by the City relating to the review and issuance of a wireless telecommunications facility permit (WTFP), including but not limited to review by the Director of Community Development and/or Director of Public Works to determine whether the issuance of a wireless telecommunications facility permit is in conformity with the applicable provisions of this Chapter 12.52.

"Amateur radio antenna" means any antenna used for transmitting and receiving radio signals in conjunction with an amateur radio station licensed by the Federal Communications Commission (FCC).

“Antenna” means the same as set forth in 47 C.F.R. Section 1.6002(b), or any successor regulation, which provides that consistent with Section 1.1320(d), an “antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of subchapter A of chapter 1 of Title 47.

“Antenna equipment” means the same as set forth in 47 C.F.R. Section 1.6002(c), or any successor regulation, which provides that consistent with Section 1.1320(d), or any successor regulation, which provides that “antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

“Antenna facility” means the same as set forth in 47 C.F.R. Section 1.6002(d), or any successor regulation, which provides that an “antenna facility” means an antenna and associated antenna equipment.

“Applicant” means any natural person, firm, partnership, association, joint venture, corporation, or other entity (or combination of entities), and the agents, employees, and contractors of such person or entity that seeks a wireless telecommunications facility permit and related ministerial permits to obtain final approval of the deployment or modification or other collocation of a wireless telecommunications facility permit at a specified location under this chapter.

“Application” means any written submission to the City for the installation, construction or other deployment of a wireless telecommunications facility permit and related ministerial permits to obtain final approval of the deployment or modification or other collocation of a wireless telecommunications facility at a specified location under this chapter.

“Approval Authority” means the Director of Community Development or Director of Public Works, or other person designated by such Director to review and issue a decision on a proposed wireless telecommunications facility permit or other authorization under this chapter.

“Authorization” means any approval that the Approval Authority must issue under applicable law prior to the installation, construction or other deployment of a wireless telecommunications facility including, but not limited to, a wireless telecommunications facility permit (WTFP), encroachment permit, excavation permit, and/or building permit.

“Base Station” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(1), or any successor regulation, 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 1.6100(b)(9), or any successor regulation, or any equipment associated with a tower.

(1) 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.

(2) 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).

(3) The term includes: (1) any structure other than a tower that, at the time the relevant application is filed with the state or local government under 47 C.F.R. Section 1.6100, or any successor regulation, supports or houses equipment described in 47 C.F.R. Sections 1.6100(b)(1)(i) through (iii), or any successor regulation; and (2) that has been reviewed and approved under the applicable 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.

(4) The term does not include any structure that, at the time the relevant application is filed with the city, state or local government under this section, does not support or house equipment described in 47 C.F.R. Sections 1.6100(b)(1)(i) and (ii), or any successor regulation.

“Batch application” or “batching” means an application for multiple wireless communication facilities at multiple locations, or multiple applications for separate facilities at multiple locations submitted at one time.

“Building-mounted” means mounted on the side of a building, to the facade of a building, or to the side of another structure (e.g., water tank, billboard, freestanding sign, etc.), but not including the roof of any building or other structure, where the entire weight of the antenna is supported by the building, through the use of an approved framework or other structural system which is attached to one or more structural members of the walls or façade of the building.

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

“CEQA” means California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or as may be amended or superseded.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Monrovia Municipal Code.

“Collocation” (or “colocation”) means as follows;

(1) For a small wireless facility (SWF), “collocation” means mounting or installing a small wireless facility in the PROW on new infrastructure, or an existing support structure, an existing tower, utility-owned structure, or on an existing pole to which another SWF is attached at the time of the application.

(2) For an eligible facility request (EFR) under Section 6409(a) of the Spectrum Act, “collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(2), or any successor regulation, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, or as otherwise defined by federal law with respect to eligible facilities. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.

(3) For purposes of a wireless telecommunications collocation facility pursuant to Government Code Section 65850.6, as amended or superseded, “colocation” means the same as defined in Government Code Section 65850.6(d)(1), which defines the term as the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.

(4) Except as otherwise provided in Subsection (1), (2) or (3), herein, "collocation" means the addition of wireless telecommunications facilities to an existing wireless telecommunications facility so that one site is shared amongst the same or different carrier.

"Collocate" or "colocate" have the same meaning.

"Communications Act" means the Communications Act of 1934 (47 U.S.C. Section 153 et seq.), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

"Competitive Local Carrier (CLC)" means a telecommunications company that competes with local telephone companies in providing local exchange service, as defined and regulated by the CPUC pursuant to Public Utilities Code Section 1001 as amended.

"Construction Codes" means California Building, Fire, Electrical, Plumbing, and/or Mechanical Codes adopted by the city.

"CPUC" means the California Public Utilities Commission.

"Day" means a calendar day, except as otherwise provided in this chapter.

"Decorative lighting" means any light fixture that incorporates ornamental design features while also meeting the specific spread and lumen requirements dictated by the location and purpose. Design features may include post top and pendant bulbs, posts, bases, cross-arms, bollards and signage. Height, density and placement relative to nearby architectural features are also relevant to the design and purpose.

"Department" means the city's Community Development Department.

"Deployment" means the installation, placement, construction, or modification of a wireless telecommunications facility, including without limitation a small wireless facility, eligible facility, major wireless telecommunications facility, or wireless telecommunications collocation facility.

"Director" means the Community Development Director of the City of Monrovia, or his or her designee.

"Dish antenna" or "Microwave dish antenna" means a dish-like antenna used to link communication sites together by wireless transmissions of voice or data. .

"Distributed antenna system (DAS)" means a network of one or more antenna and fiber optic nodes connecting to a common base station or "hub."

"Educational institution" means any public or private pre-school, daycare center, child care facility, school, college, community college, or university.

"Electromagnetic field" means the local electric and magnetic fields caused by voltage and the flow of electricity that envelop the space surrounding an electrical conductor.

"Eligible Facilities Permit (EFP)" means a permit for an eligible facilities request under Section 6409(a) that meets the criteria set forth in this chapter.

"Eligible Facilities Request" means, for purposes of Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(3), or any successor regulation, 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.

“Eligible Support Structure” means, for purposes of Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(4), or any successor regulation, which defines that term as any tower or base station as defined in 47 C.F.R. Section 1.6100(b)(1) or (9), or any successor regulation; provided, that it is existing at the time the relevant application is filed with the state or local government under this definition.

“Emergency standby generator” means, for purposes of installation of an emergency standby power generator on a macro-cell tower site pursuant to Government Code Section 65850.75, the same as defined by Government Code Section 65850.75(a)(1), which provides that an emergency standby generator is a stationary generator used for the generation of electricity that meets the criteria set forth in paragraph (29) of subdivision (a) of Section 93115.4 of Title 17 of the California Code of Regulations.

“Equipment cabinet” means a cabinet or structure used to house equipment associated with a wireless, hard wire, or cable communication facility.

“Existing” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(4), or any successor regulation, 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.

“Facility(ies)” means wireless telecommunications facilities or wireless telecommunications collocation facilities, unless the context or express language specifically limits it to one or the other.

“Federal Communications Commission” or “FCC” means the Federal Communications Commission.

“Ground mounted” means any freestanding antenna, the entire weight of which is supported by an approved freestanding platform, framework, or other structural system which is attached to the ground by a foundation.

“Macro cell tower site” means, for purposes of proposed installation of an emergency standby generator pursuant to Government Code Section 65850.75, the same as defined by Government Code Section 65850.75(a)(3), which defines a macro cell tower site as the place where wireless communications equipment and network components, including towers, transmitters, base stations, and emergency power necessary for providing wide area outdoor service, are located. A macro cell tower site does not include rooftop, small cell, or outdoor and indoor distributed antenna system sites.

“Major Wireless Facility (MWF) means a wireless telecommunications facility that does not qualify as either a small wireless facility or an eligible facility, including without limitation, a macro cell site or macro-cell tower site.

“Major Wireless Facility Permit (MWFP) means a permit for installation or modification of a major wireless facility under this chapter.

“Ministerial permit” means an excavation permit, encroachment permit, or building permit and any required ministerial permit application form and supporting documents required by the City for deployment of a wireless telecommunications facility or wireless telecommunications collocation facility under this code.

"Modification" means a change to an existing wireless telecommunications facility that is not a substantial change to the physical dimensions of the eligible support structure as defined in 47 C.F.R. Section 1.6100(b)(7), or any successor regulation, and includes, but is not limited to, any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, exterior material, or increases to the power output of the wireless telecommunications facility or wireless telecommunications collocation facility. "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.

"Monopole" means a structure composed of a single pole used to support antennas or related equipment and includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

"Mounted" means attached or supported.

"Panel" means an antenna or array of antennas that are flat and rectangular and are designed to concentrate a radio signal in a particular area. Also referred to as a directional antenna.

"Park" means an area of land that is used for active or passive public recreational purposes.

"Permittee" means and includes the applicant and all heirs, successors or assigns of a permit issued for any kind of wireless telecommunications facilities permit (WTFP) under this chapter and any related ministerial permit approved by the city.

"Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code. A pole does not include a tower or support structure and does not include a pole or structure that supports electric transmission lines.

"Public entity" includes the federal government, the State of California (state), a county, city, district, public authority, public agency, and any other political subdivision of the state or public corporation in the state.

"Public property" means any land, and any improvements, fixtures, buildings, facilities and other structures of any kind located on or attached to land, which is owned, leased, managed or controlled by the city or another public entity, excluding any public right-of-way.

"Public right-of-way (or "right of way" or PROW)" means any public street, public way, road, highway, alley, sidewalk, path, or parkway now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, that is located within the jurisdictional boundaries of the city where such PROW is owned, leased, granted by easement, operated or otherwise controlled by the city or another public entity; and also shall mean any other area described in and subject to California Public Utilities Code Section 7901 or 7901.1, as interpreted by applicable case law, and owned, licensed, leased or otherwise under the control of the city or any other public entity.

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

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

“Rules and guidelines” means the rules, guidelines, regulations and procedures adopted from time to time by the Director or by resolution of the city council to administer and implement this chapter.

“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) (the “Spectrum Act”), as may be amended.

“Site” means, for purposes of eligible support structures within the PROW under Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(6), or any successor regulation, which provides that a “site” is restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. For purposes of this definition, the current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by the city, State or other local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.

“Small wireless facility (SWF)” is a facility that meets each of the following conditions:

(1) The facility—

- a. is mounted on structures 50 feet or less in height including its antennas as defined in this section; or
- b. is mounted on structures no more than 10 percent taller than other adjacent structures, or
- c. does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in this section), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under Part 17 of Subchapter A of Chapter 1 of Title 47 C.F.R., or its successor regulations;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x), or its successor regulation; and

(6) The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b), or its successor regulation.

“Stealth facility” (also referred to as a “concealed antenna”) means a telecommunications facility that is designed to blend into the surrounding environment, typically one that is architecturally or aesthetically camouflaged or otherwise integrated into a structure. Also referred to as a concealed antenna.

“Structure” means a pole, tower, base station, or structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless telecommunications service.

“Substantial change” means, for purposes of Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(7), or any successor regulation, which organizes the FCC’s criteria and thresholds for determining if a modification substantially changes the physical dimensions of a wireless tower or base station based on the type and location. Under that definition, a modification substantially changes the physical dimensions of an eligible support structure (tower or base station) in the PROW if it meets any of the following criteria:

(1) The proposed modification increases the overall height of the eligible support structure more than ten percent (10%) or ten (10) feet (whichever is greater); or

(2) The proposed modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the tower or base station by more than six (6) feet; or

(3) The proposed modification involves the installation of any new ground-mounted equipment cabinets when there are no pre-existing ground-mounted equipment cabinets associated with the structure; or involves the installation of any new ground-mounted equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing ground-mounted equipment cabinets associated with the structure; or

(4) The proposed modification involves excavation or deployment outside the current site;

(5) The proposed modification would defeat the existing concealment elements of the eligible support structure (wireless tower or base station) as reasonably determined by the director; or

(6) The proposed modification does not comply with conditions of approval associated with the construction or modification of the eligible support structure or base station equipment; 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.

(7) For purposes of this definition, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

“Telephone corporation” means any person, company, firm or entity that qualifies as a “telephone corporation” pursuant to California Public Utilities Code Section 234 as amended from time to time.

“Temporary wireless telecommunications facility” means any portable wireless facility intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless telecommunications facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless facilities not permanently affixed to site on which it is located.

“Tower” or “telecommunications tower” means as follows:

(1) For purposes of an eligible facility request under Section 6409(a) of the Spectrum Act, “tower” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(9), or any successor regulation, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and

public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles, monotrees and lattice towers.

(2) For any wireless facility that does not qualify as an eligible facility, a “telecommunications tower” or “tower” means any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna or similar apparatus above grade. A tower includes but is not limited to, a mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas; including without limitation, a ground-mounted tower.

“Transmission Equipment” means, for purposes of an eligible facility request under Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(8), or any successor regulation, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communications 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.

“Utility Pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

“Wireless telecommunications collocation facility (WTCF)” means the same as defined in Government Code Section 65850.6, as may be amended or superseded, which defines a “wireless telecommunications collocation facility” as a wireless telecommunications facility that includes collocation facilities; a “collocation facility” is the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, another wireless telecommunications collocation facility; a “wireless telecommunications facility” as equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services. “Wireless telecommunications facility” includes, but is not limited to, a small wireless facility, an eligible facility, and a major wireless telecommunications facility, as defined in this chapter.

Wireless telecommunications facility (WTF) or “wireless facility” means any facility that is used for public, commercial and private electromagnetic and photoelectrical transmission, broadcast, repeater and receiving stations for radio, television, telegraph, telephone, data network, and wireless telecommunications, including commercial earth stations for satellite-based communications, whether such service is provided on a stand-alone basis or is commingled with other wireless communications services, including but not limited to, antennas, commercial satellite dish antennas, equipment and other accessory structures. “Wireless telecommunications facility” includes, without limitation, a small wireless facility, an eligible facility, a major wireless facility and a wireless telecommunications collocation facility as defined in this chapter.

(1) Exceptions: The term “wireless telecommunications facility” does not include 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) Any antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or its 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) Any wireless telecommunications facility owned, leased and/or operated by the city or any other governmental agency.

(e) Emergency medical care provider-owned and operated telecommunications facilities.

(f) Mobile services providing public information coverage of news events of a temporary nature.

(g) Any wireless telecommunications facility exempted from this code by federal law or state law; subject to submittal of documentation establishing the applicable exemption.

(h) Any wireless telecommunications facility located on private property outside of the public right-of-way;

(i) Any wireless telecommunications facility located on any public property owned or granted by easement or lease, operated, or controlled by the city, the state or the federal government that is outside the public right-of-way.

(j) Telephone, telegraph and cable television transmission facilities utilizing hard-wired or direct cable connections.

"Wireless Telecommunications Facility Permit (WTFP)": a permit issued by the City pursuant to this chapter, and including the following categories:

(1) Small Wireless Facility Permit (SWFP): a permit issued by the Director pursuant to this chapter for (a) the deployment of a new small wireless facility, or (b) the replacement of, collocation on, or modification of an existing small wireless facility.

(2) Eligible Facility Permit (EFP): a permit issued by the Director pursuant to this chapter for deployment of a wireless telecommunications facility that constitutes an eligible facility request as defined in Section 6409(a) of the Spectrum Act and related federal regulations.

(3) Major Wireless Permit (MWP): a permit issued by the Director pursuant to this chapter for (a) the deployment of a new major wireless facility, or (b) the replacement of, collocation on, or modification of an existing major wireless facility.

(4) Wireless Telecommunications Facility Collocation Permit (WTFCP): a permit issued by the Director pursuant to this chapter for the deployment of a major wireless telecommunications collocation within the meaning of Government Code Section 65850.6.

(5) Maintenance Encroachment Permit: an encroachment permit issued by the Director pursuant to this chapter, and Chapter 12.48, Encroachments, of this code or an excavation permit issued by the Director pursuant to Chapter 12.08 of this code, or a building permit issued by the Building

Official pursuant to Title 15 of the code and related Construction Codes, to carry out minor modifications, minor emergency maintenance or repairs, or other routine maintenance or repairs to an existing WTF.

§ 12.52.030 APPLICABILITY.

(A) This chapter applies to the siting, construction, modification or other deployment of any and all WTFs located or proposed to be located within the PROW as follows:

(1) All WTFs for which applications were not approved prior to the effective date of this section shall be subject to and comply with all provisions of this chapter.

(2) All WTFs for which applications were approved and permits issued by the City prior to the effective date of this chapter shall not be required to obtain a new or amended WTFP until such time as this section so requires. If a WTF was lawfully constructed or installed within the PROW in accordance with applicable local, state or federal regulations prior to the effective date of this section but does not comply with the current standards, regulations and/or requirements of this section, such WTF shall be deemed a legal nonconforming facility and shall also be subject to the provisions of Section 12.52.210.

(3) Any WTF proposed to be installed, modified or otherwise deployed on any existing utility structure (e.g., Southern California Edison or Southern California Gas Company) in the PROW, except as otherwise required by state or federal pole attachments rules or any other provision of federal and/or state law, subject to submittal of documentation establishing the applicable exemption; and provided further that such WTF shall comply with all other standards set forth in this chapter and the rules and guidelines, and shall obtain any related ministerial permit(s) (encroachment permit, excavation permit, or building permit) required in order to access and/or use the PROW.

(4) Any WTF proposed to be installed, modified or replaced on any City infrastructure located within the PROW, including but not limited to, any City-owned, leased or licensed pole, tower, base station, cabinet, structure, or facility of any kind. The City may require that the City and an applicant enter into a license, lease or other agreement in a form acceptable to the City, in accordance with Section 12.52.050(J) of this chapter, prior to approval of a WTFP for a facility to be installed, modified or replaced on City infrastructure..

(B) Exemptions. This chapter does not apply to the following wireless telecommunications facilities:

(1) An amateur station as defined by the FCC, 47 C.F.R. Part 97, of the FCC's Rules, or its successor regulation.

(2) Any antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or its 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.

(3) 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.

(4) Any WTF owned, leased and/or operated by the City or any other governmental agency.

(5) Emergency medical care provider-owned and operated facility.

(6) Mobile services providing public information coverage of news events of a temporary nature.

(7) Any other WTF exempted from this code by federal or state law, subject to submittal of documentation establishing the applicable exemption.

(8) Any WTF proposed to be deployed or deployed on any public property owned or leased by the City or any other public entity located outside of the PROW, including but expressly not limited to, City-owned or controlled infrastructure located outside the PROW or any infrastructure owned by any other public entity outside the PROW, including but not limited to, any City-owned, leased or licensed street lights, traffic light poles, wires, fiber-optic strands, conduit, and any other City-owned or controlled poles, towers, base stations, cabinets, structures, buildings, or facility of any kind located outside the PROW. Such wireless telecommunications facilities on public property outside the PROW shall be subject to Chapter 17.46 of Title 17 of this code and not to this chapter.

(9) Any WTF proposed to be deployed or deployed on any private property. WTFs on private property shall be subject to Chapter 17.46 of Title 17 of this code and not to this chapter.

§ 12.52.040 GENERAL REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

(A) Permits required. No new wireless telecommunications facility shall be constructed, installed, modified, replaced or otherwise deployed in the PROW except upon approval of a SWFP, WTFCF, EFP, MWP, or minor encroachment permit, in accordance with the requirements of this chapter, and all related ministerial permits.

(B) Conflicting provisions. An application for a WTFP shall be processed in compliance with this chapter, and any supplemental rules, regulations, procedures and forms adopted by the Director. Ministerial permits shall meet all requirements of this chapter and all other applicable provisions of this code, the rules and guidelines, and any additional Director-adopted rules, regulations, policies and forms. In the event of any conflict between the provisions of this chapter and any other provision of this code, the provisions of this chapter shall govern and control.

(C) Permit type. Table 12.52.040 identifies the type of permit required for each wireless facility, and the approval authority.

TABLE 12.52.040

**Public Rights-of-Way Wireless Telecommunications Facilities
Required Permit Matrix**

TYPE OF FACILITY	TYPE OF PERMIT	APPROVAL AUTHORITY
Small Wireless Facility ¹	Small Wireless Facility Permit (SWFP) ³	Community Development Director or designee; Public Works Director or designee

Eligible Facility Request ¹	Eligible Facility Permit (EFP) ³	Community Development Director or designee; Public Works Director or designee
Major Wireless Facility (or MWF) ¹	Major Wireless Facility Permit (MWFP) ³	Community Development Director or designee; Public Works Director or designee
Wireless Telecommunications Collocation Facility (or WTCF) ¹	Wireless Telecommunications Collocation Facility Permit (WTCFP) ³	Community Development Director or designee; Public Works Director or designee
Maintenance, repairs and minor modifications for Small Wireless Facility, Eligible Facility or Major Wireless Facility	Maintenance Encroachment Permit ³	Community Development Director or designee; Public Works Director or designee
Power Generator on Small Wireless Facility or Eligible Facility Request	SWFP, EFP, or WTCFP ³	Community Development Director or designee; Public Works Director or designee; and/or Building Official or designee
Emergency Standby Generator on Macro-Cell Tower Site (Government Code Section 65850.75) ²	Encroachment Permit, Excavation Permit and/or Building Permit ⁴	Community Development Director or designee; Public Works Director or designee; and/or Building Official or designee
Other Power Generators on Major Wireless Facility Sites	Major Wireless Facility Permit; and Encroachment Permit, Excavation Permit and/or Building Permit ⁴	Community Development Director or designee; Public Works Director or designee; and/or Building Official or designee
Encroachment, or excavation and/or construction	Encroachment Permit, Excavation Permit, and/or Building Permit ⁴	Community Development Director or designee; Public Works Director or designee; and/or Building Official or designee

Legend and Explanations. The following Legend and explanations apply to the above chart.

Legend	
1	For definition of each type of wireless telecommunications facility, see Section 12.52.020.

2	For definitions of emergency standby generator and macro-cell tower site, see Section 12.52.020.
3	For definitions of permits, see Section 12.52.020.
4	For encroachment permits, see Chapter 12.48; for excavation permits, see Chapter 12.08; and for building permits, see Title 15 and City-adopted State Building, Fire and Mechanical Codes including but not limited to Chapter 15.04, 15.08, 5.20 15.28, and 15.36).

(D) Small Wireless Facility Permit (SWFP) in PROW.

(1) An SWFP, subject to the City's determination of compliance with the applicable requirements of this chapter may be issued by the Director or his or her designee within the PROW under any of the following circumstances:

(a) The application is for installation of a new SWF within the PROW, or the replacement of, or collocations on or modifications to an existing small wireless facility, within the PROW, that meets all of the following criteria:

(i) The proposal complies with all applicable provisions in this section without need for an exception pursuant to Section 12.52.100; and

(iii) The proposal is not located in any prohibited location, including but not limited to, any location identified in Section 12.52.060(D)(2), (3), (4), or (5), or Section 12.52.100(E); or

(b) The application is for a subsequent collocation to be located on an existing legally established small wireless telecommunications collocation facility within the PROW that meets all of the requirements for eligibility as a wireless telecommunications facility as defined in Government Code Section 65850.6, including compliance with all of the following conditions determined by the Director:

(i) The existing collocation facility complies with the requirements of Government Code Section 65850.6(b), for wireless telecommunication collocation facilities or its successor provision, for addition of a collocation facility to a wireless telecommunication collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this section and the conditions of approval in the wireless telecommunications collocation facility permit;

(ii) The collocated facility does not increase the height or location of the existing permitted tower/structure, or otherwise change the bulk, size, or other physical attributes of the existing permitted small wireless facility; and

(iii) Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permit(s), as required pursuant to this code.

(iv) For purposes of this Section 12.52.050(D)(2)(b) only, "collocation facility" shall have the meaning set forth in Government Code Section 65850.6, as amended or superseded. (See Section 12.52.020, definition of "collocation", paragraph (3) of this chapter.)

(v) All requirements, regulations, standards and conditions set forth in this chapter for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility.

(c) The application for a SWFP shall meet the requirements of Section 12.52.050 and 12.52.060. No public notice or public hearing shall be required. The Director shall review the application, pertinent information and documentation in accordance with Section 12.52.080. An application for a SWFP shall be approved if the Director makes all of the findings required by Section 12.52.090 of this chapter. The Director's decision shall be issued in writing in accordance with the procedures and conditions set forth in Section 12.52.080 and 12.52.100. The Director may impose additional conditions on the permit relating to time, place and manner pursuant to Section 12.52.070.

(E) Eligible facilities in PROW. Unless specifically exempt by federal or state law, any application for the installation or modification of a WTF within or on the PROW that constitutes an "eligible facilities request" within the meaning of Section 6409(a) shall require the approval of an Eligible Facility Permit (EFP) by the Director in accordance with the requirements of this chapter and the City's rules and guidelines prior to deployment of the eligible facility.

(F) Major Wireless Facilities (MWFs) in the PROW. Unless specifically exempt by federal or state law, any application for the installation or modification of a MWF shall require the approval of a Major Wireless Facility Permit (MWFP) by the Director in accordance with the requirements of this chapter and the rules and guidelines prior to deployment of the facility. MWFs shall be subject to Sections

(G) Wireless Telecommunications Collocation Facilities. Except as otherwise provided by state or federal law, all requirements, regulations, standards and conditions set forth in this chapter for a category of wireless telecommunications facility shall apply to a wireless telecommunications collocation facility proposed to be collocated on that facility.

(H) Maintenance Encroachment Permit. Minor modifications to an existing WTF, including replacement with the in-kind, number, size or with smaller or less visible equipment, that (a) meet the standards set forth in this section, (b) will have little or no change in the visual appearance of the SWF, and (c) do not increase the RF output of the WTF, are considered to be routine maintenance and repairs, and may be approved by a maintenance encroachment permit, subject to compliance with all other requirements of this chapter. Maintenance and repairs include, but are not limited to, those minor modifications that result from an emergency. The upgrade or any other replacement of existing facilities and all new antennas, structures, and other facilities, including but not limited to, those resulting from an emergency, shall comply with the SWFP, WTCF, EFP, or MWF requirements of this chapter.

(I) Other permits required. In addition to any permit that may be required under this section, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter shall also be subject to the conditions and/or requirements of all such other required City, state or federal prior permits or other approvals.

(J) Eligible applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise or license agreement with the City permitting them to use the PROW, shall be eligible to construct, install, modify or otherwise deploy a WTF in the PROW.

(K) Speculative equipment or facilities prohibited. The City finds that the practice of "pre-approving" wireless communications equipment or other improvements that the applicant does not presently

intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The City shall not approve any equipment or other improvements in connection with a WTFP when the applicant does not actually and presently intend to install such equipment or construct such improvements.

(L) Prohibited facilities. Any WTFP that does not comply with the most current regulatory and operational standards and regulations (including, but not limited to RF emission standards) adopted by the FCC is prohibited.

(M) Power generators (backup power sources). In addition to all other requirements of this chapter, the following provisions shall apply to power generators proposed to be installed in connection with any wireless telecommunications facility in the PROW.

(1) Small Wireless Facilities and Eligible Facilities Requests.

(a) An exception approved by the Director pursuant to Section 12.52.100 shall be required for any application to install a power generator in conjunction with deployment of any small wireless facility within the PROW.

(b) An application that includes a backup power supply that qualifies as transmission equipment of an eligible facility shall be governed by procedures and requirements for eligible facilities unless the proposal constitutes a substantial change.

(c) Fossil fuel generators or other similar noise or odor producing generators. In addition to all other findings required for an exception, the Director shall not approve any fossil fuel-powered backup power sources or generators other similar noise or odor producing generators for a small wireless facility or backup power supply that constitutes a substantial change unless the applicant demonstrates that it cannot feasibly achieve its power needs with batteries, natural gas powered generators, fuel cells, solar or other similarly non-polluting, low noise-level means due to commercial impracticability, actual unavailability, and inability of alternative means to feasibly achieve the power needs of the facility.

(c) All related ministerial permits and compliance with applicable Construction Codes and other health and safety standards shall be required for any application for deployment of a new generator or replacement or modification of an existing generator, as determined to be necessary by the Director.

(2) Major Wireless Facilities

(a) Emergency Standby Generator on Macro-Cell Tower Sites. Any proposed emergency standby generator on a macro-cell tower site subject to Government Code Section 65850.75 shall comply with the requirements of Section 12.52.220 of this chapter; and all other related ministerial permits shall be required for any application for deployment of a new generator or replacement or modification of an existing generator, as determined to be necessary by the Director pursuant to applicable Construction Codes and health and safety requirements.

(b) Power Generators on Other Major Facility Sites (non-Government Code Section 65850.75). Any proposed power generator on any major facility site that is not subject to Government Code Section 65850.75 shall comply with Section 12.52.230 of this chapter; and an exception shall also be required pursuant to Section 12.52.100. All related ministerial permits shall also be required, as determined to be necessary by the Director based on the type, size and characteristics of the proposed power generator. An application that includes a backup power supply that qualifies as

transmission equipment for an eligible facility shall be governed by procedures and requirements for eligible facilities unless the proposal constitutes a substantial change.

§ 12.52.050 APPLICATION PROCEDURES AND REQUIREMENTS.

(A) Purpose. This section sets forth the application submittal requirements for all permits required by this chapter. These requirements may be augmented by rules and guidelines adopted by resolution of the City Council. The Director also may augment the provisions of this section and any rules and guidelines to further implement these provisions by the adoption of written rules that are posted on the City's website. The purpose of this section is, in part, to ensure that this chapter is implemented to the full extent permitted by the Telecommunications Act of 1996, Section 6409(a), the Declaratory Ruling and Third Report and Order adopted by the FCC entitled *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 83 FR 51867-01 (published in the Federal Register on October 15, 2018) [hereinafter "Report and Order"], the final rule adopted by the FCC entitled *Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications*, 85 FR 78005-01 (published in the Federal Register on December 3, 2020); Government Code Sections 65850.6 and 65850.75, and all applicable federal regulations, FCC rulings and orders, and state laws, regulations and orders applicable to the installation, modification and/or collocation of wireless telecommunications facilities.

(B) Complete application required. The applicant shall submit a WTFP application in writing to the Community Development Department on a City-approved form as prescribed by the Director, and shall submit all information, materials and documentation required by this section and as otherwise determined to be necessary by the Director to effectuate the purpose and intent of this chapter. The Director may waive certain submittal requirements or require additional information based on specific project factors. Unless an exemption or waiver applies, all applications shall include all of the forms, information, materials and documentation required by the City. An application shall not be deemed complete by the City unless the completed City application form and all required information, materials and documentation have been submitted to the City. An application which does not include all required forms, information, materials and documentation required by this section shall be deemed incomplete, and a notice of incomplete application shall be provided to the applicant in accordance with Section 12.52.050(G).

(C) Application fees. Concurrent with submittal of the application, the applicant shall pay an application fee and processing fee, a deposit for an independent expert review as set forth in this section, and a deposit for review by the City Attorney's office, in a payment format accepted by the Administrative Services Department and in amounts set by resolution of the City Council. The amounts of such fees shall be competitively neutral and nondiscriminatory. Application fees shall not exceed any maximum fees set by federal or state law except to the extent that such fees are (a) a reasonable approximation of costs, (b) those costs themselves are reasonable, and (c) are nondiscriminatory. Failure to pay the fees in full at the time of application submittal shall result in the City deeming the application incomplete. Batch applications for small wireless facilities must include the applicable fees and deposits for each SWF in the batch as established by resolution of the City Council.

(D) Voluntary Pre-submittal Conference. The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director for all proposed wireless telecommunications facilities in the PROW , including all new or replacement SWFs, and all proposed collocations or modifications to any existing SWF. This voluntary pre-submittal conference is not part of the application process, and does not cause the Shot Clock to begin. The pre-submittal conference is intended to streamline the review process through informal discussion and consultation that includes but is not limited to, the proposed classification, review procedure, location, design and application materials, permit requirements and review process for a potential facility, any latent issues in

connection with a potential 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 completion issues.

(E) Independent expert. The Director is authorized to retain on behalf of the City an independent, qualified consultant to review any application for a WTFP to review the technical aspects of the application, including but not limited to: the accuracy, adequacy, and completeness of submissions; compliance with applicable radio frequency emission standards; whether any requested exception is necessary; technical demonstration of the facility designs, configurations, technical feasibility; coverage analysis; proposal of alternative sites and alternative designs, compliance with standards; the validity of conclusions reached or claims made by the applicant; and other factors deemed appropriate by the Director to effectuate the purposes of this section. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. All costs shall be reasonable and consistent with industry standards.

(F) Shot Clocks: Timeline for review and action. The timeline for review of and action on a WTFP application shall begin to run when the application is submitted in writing to the Department but may be reset or tolled by mutual agreement or upon the City's issuance of a notice of incomplete application to the applicant pursuant to Subsection (G) of this Section. Applications shall be processed in conformance with the time periods and procedures established by applicable state and federal law, and FCC regulations and orders. The following provisions shall apply:

(1) Small Wireless Facilities.

(a) 60 days -- For an application to collocate a Small Wireless Facility using an existing structure, the City will act upon the application within sixty (60) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual agreement or pursuant to Section 12.52.050(G).

(b) 90 days -- For an application to deploy a Small Wireless Facility using a new structure, the City will act upon the application within ninety (90) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual written agreement or pursuant to Section 12.52.050(G).

(c) Batching. An applicant may submit a single application for authorization of multiple deployments of SWFs pursuant to this section. An application containing multiple deployments shall comply with the following timing requirements:

(i) The deadline for the City to act upon the application shall be that for a single deployment within that category of facility,

(ii) 90 days: If a single application seeks authorization for multiple deployments of small wireless facilities, the components of which are a mix of deployments that fall within Section 12.52.050(F)(1)(a) and deployments that fall within Section 12.52.050(F)(1)(b), then the City shall act upon the application as a whole within 90 days, unless tolled or reset by mutual written agreement or pursuant to Section 12.52.050(G)(1)(a) or (b).

(2) Eligible Facilities Request.

(a) 60 Days. Within 60 days of the date on which an applicant submits a written request seeking approval of an eligible facilities request under this section, the Director or the Director's designee will approve the application unless the Director or designee determines that the

application is not covered by this section or the 60-day deadline is tolled pursuant to mutual agreement or Section 12.52.050(G)(2)(a) or (b).

(3) Major Wireless Communications Facilities.

(a) 90 days -- For an application for a MWF using an existing structure, the Director or designee will act upon the application within ninety (90) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual agreement or pursuant to Section 12.52.050(G)(3)(a) or (b).

(b) 150 days -- For an application for a MWF using a new structure, the Director or designee will act upon the application within one hundred fifty (150) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual written agreement or pursuant to Section 12.52.050(G)(3)(a) or (b)).

(c) Batching. Batch applications for installation, collocation or deployment of multiple MWFs at multiple locations, or multiple applications for separate MWFs at multiple locations submitted at once, are prohibited.

(4) Determination of shot clock date.

(a) The shot clock date for a WTFP application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of days of the applicable shot clock period identified pursuant to Section 12.52.050(F) or Section 12.52.050(G); provided, that if the date calculated in this manner is a holiday, the shot clock date is the next business day after such holiday.

(b) For purposes of this Subsection (F)(4), the term "holiday" means any of the following: Saturday, Sunday, any holiday recognized by the City; and any other day recognized as a holiday by the FCC pursuant to any applicable federal regulations, orders or rulings of the FCC for the subject SWFP.

(c) For purposes of this Subsection (F)(4), the term "business day" means any day that is not a holiday, as defined in Subparagraph (b).

(G) Resetting or Tolling of Shot Clock; Incomplete Application Notices. Unless a written agreement between the City and the applicant provides otherwise, in the event that Department staff determines that a permit application is incomplete because it does not contain all the information, materials and/or other documentation required by this section, Department staff may issue a notice of incomplete application to the applicant, and the shot clocks set forth above shall be re-set or tolled as set forth in this subsection.

(1) Small Wireless Facilities.

(a) First Incomplete Notice -- Resetting of Shot Clock. Department staff shall determine whether an application for a SWF is complete or incomplete within ten (10) days of the City's receipt of the initial application and shall notify the applicant in writing if the application is materially incomplete. The notice of incomplete application shall identify the specific missing information, materials and/or documents, and the ordinance, rule, statute or regulation creating the obligation to submit such information, materials and/or documents. The applicable shot clock date calculation set forth in Section 12.52.050(F)(1)(a) or (b) shall re-start at zero on the date that the applicant submits all the information, materials and documents identified in the notice of incomplete application to render the application complete.

(b) Subsequent Incomplete Notices. For resubmitted applications following the initial notice of incomplete application under Section 12.52.050(G)(1)(a), Department staff will notify the applicant within ten (10) days of the City's receipt of the resubmitted application regardless of whether the supplemental submission is complete or incomplete. If the supplemental submission was incomplete, the notice shall specifically identify the missing information, materials, and/or documents that must be submitted based on the Department's initial incomplete notice. In the case of any such subsequent notices of incomplete application, the applicable timeframe for review set forth in Section 12.52.050(F)(1)(a) or (b) shall be tolled from the day after the date the City issues the second or subsequent notice of incomplete application to the applicant until the applicant submits all the information, materials and documents identified by the City to render the application complete.

(c) One Submittal. The applicant's response and submission of supplemental materials and information in response to a notice of incomplete application must be given to the City in one submittal packet.

(2) Eligible Facilities Request (EFP).

(a) First Incomplete Notice -- Tolling of Shot Clock. Within 30 days of the city's receipt of the initial application for an EFP, Department staff shall provide written notice to the applicant that the application is complete or incomplete. If the application is incomplete, the notice shall clearly and specifically delineate all missing information and documents. The 30-day shot clock date shall be tolled until the applicant makes a supplemental submission in response to the city's notice of incompleteness.

(b) Subsequent Incomplete Notices. Within 10 days of each supplemental submission, the city shall deem the application complete or incomplete. If the supplemental submission is incomplete, the notice shall clearly and specifically delineate all missing information and documents from the supplemental submission based on the information or documents identified in the first notice delineating missing information or documentation. The 10-day timeframe is tolled in the case of second or subsequent notices pursuant to this procedure. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(3) Major Wireless Facilities Permit (MWFP).

(a) First Incomplete Notice -- Resetting of Shot Clock. Department staff shall determine whether an application for a MWFP is complete or incomplete within thirty (30) days of the City's receipt of the initial application and shall notify the applicant in writing if the application is materially incomplete. The notice of incomplete application shall identify the specific missing information, materials and/or documents, and the ordinance, rule, statute or regulation creating the obligation to submit such information, materials and/or documents. The applicable shot clock date calculation set forth in Section 12.52.050(F)(3)(a) or (b) shall be tolled from the date after the date the City issues the notice of incomplete application until the applicant submits all the information, materials and documents identified in the notice of incomplete application to render the application complete.

(b) Subsequent Incomplete Notices -- Tolling of Shot Clock. For resubmitted applications following the initial notice of incomplete application under Section 12.52.050(G)(3)(a), Department staff will notify the applicant within ten (10) days of the City's receipt of the resubmitted application whether the supplemental submission is complete or incomplete. If the supplemental submission was incomplete, the notice shall specifically identify the missing information, materials, and/or documents that must be submitted based on the Department's initial incomplete notice. In the case of any such subsequent notices of incomplete application, the applicable timeframe for review

set forth in Section 12.52.050(F)(3)(a) or (b) shall be tolled from the day after the date the City issues the second or subsequent notice of incomplete application to the applicant until the applicant submits all the information, materials and documents identified by the City to render the application complete.

(4) One Submittal. The applicant's response and submission of supplemental materials and information in response to any notice of incomplete application issued pursuant to Subsections (G)(1), (2) or (3) must be given to the City in one submittal packet.

(H). Withdrawal; extensions of time. To promote efficient review and timely decisions, any application deemed incomplete must be resubmitted within one-hundred eighty (180) days after issuance of any notification of incompleteness, or the application shall be deemed automatically withdrawn. Following the applicant's request, the Director may in his or her discretion grant a one-time extension in processing time to resubmit, not to exceed 150 days. If the application is deemed automatically withdrawn (and any applicable extension period, if granted, has expired), a new application (including, fees, plans, exhibits, and other materials) shall be required in order to commence processing of the project. No refunds will be provided for withdrawn applications.

(I) Application Content -- General Requirements. The Director shall develop permit application forms as the Director deems appropriate based on the requirements of this chapter and the rules and guidelines, and make the forms available to applicants upon request. An application for the approval of the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility shall be provided by the applicant to the Director in writing made in writing on the city-approved form, and shall include the following information, in addition to all other information and documentation determined necessary by the Director as well as all other information and documentation required by the city as part of a complete application for the required permit. The requirements of this section may be supplemented by rules and guidelines adopted from time to time by the City Council or Director-implemented supplemental rules, regulations and procedures that are posted on the City's website. The applicant shall also submit any other application for a ministerial permit required by this code (such as an encroachment permit, excavation permit or building permit) concurrent with the WTFP application.

(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) A full written description of the proposed facility, its purpose and specifications; and the type of facility, including without limitation all information and documentation demonstrating that the proposed facility qualifies for the type of permit applied for.

(a) An application for a small wireless facility permit (SWFP) shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as a small wireless facility as defined and in accordance with the requirements of federal or state law.

(b) An application for an eligible facility permit (EFP) shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as an eligible facilities request as defined and in accordance with the requirements of Section 6409(a) and related federal regulations.

(c) An application for a wireless telecommunications collocation facility permit (WTCFP) shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as a major wireless telecommunications facility as defined and in accordance with the requirements of Government Code Section 65850.6.

(3) A detailed site and engineering plan of the proposed WTF containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by this chapter and the Director.

(4) A noise study in a form satisfactory to the Director, which demonstrates the proposed facility and any related equipment will comply with the noise requirements of this chapter and any rules and guidelines adopted and published by the city. The noise study shall be prepared and certified by an engineer licensed by the State of California for the proposed wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also 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 an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

(5) Photographs of facility equipment and an accurate visual impact analysis with photo simulations.

(6) Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or other approvals for the facility required by the Federal Communications Commission.

(7) Proof of applicable licenses or other approvals for the facility required by the any other federal, state or local agency, such as the Federal Aviation Administration.

(8) A ~~written description coverage map~~ identifying the geographic service area for the subject installation.

(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) Procedures to ensure that the facility will be maintained in substantial compliance with this chapter.

(11) For any facility proposed to be collocated on an existing or replacement pole owned by Southern California Edison (SCE), the applicant shall provide all authorization forms, studies, consent letters, and disconnect letters and other documentation required by SCE.

(12) For any facility proposed to be located on a utility pole subject to the PUC's pole attachment rules, all joint pole authorization forms, approvals demonstrating compliance with the applicable pole attachment requirements, and authorization and approvals by the utility owning the pole.

(123) An application and processing fee, a deposit for independent consultant review, and a deposit for review by the city attorney's office, in amounts set by resolution by the City Council.

(134) Any other studies or information required by the rules and guidelines, which are determined necessary by the Director.

(J) Leases, Licenses and Agreements for City Infrastructure or Property in the PROW. In addition to all other requirements of this chapter, the City may require the execution of a written agreement establishing the particular terms and provisions under which the applicant may install, modify, collocate

or otherwise deploy a WTF on any City-owned infrastructure or other City property within the PROW. The city may, but shall not be required to, allow multiple WTFs in one lease or other agreement.

(1) The agreement shall include, but not be limited to, the following:

- (a) Term.
- (b) Rents, fees and costs.
- (c). Inspection and maintenance requirements.
- (d) Indemnification of the city.
- (e) Insurance requirements.
- (f) Waiver of monetary damages against the city.
- (g) Removal, restoration and clean-up requirements.
- (h) Requirement to pay possessory interest taxes, if any.

(i) Such other provisions, terms and conditions deemed necessary and appropriate by the city based on the application, and consistent with federal and state law.

(2) The agreement shall be in addition to, and not a substitute, for any permit required by any provision of this chapter or code. An individual WTFP shall be required for each proposed facility that is proposed to be covered by one agreement between the City and the applicant. The agreement shall be fully executed by the City and applicant prior to the applicant's submittal of any permit application under this chapter or any other provision of this code. In addition, all ministerial permits shall be obtained as a condition of the installation, construction or other deployment of any proposed WTF within the PROW.

(3) The shot clock provisions set forth in Section 12.52.050(F) and (G) shall not apply during any negotiations for any such lease, license or other agreement. The shot clock provisions set forth in Section 12.52.050(F) and (G), as applicable, shall commence upon the date of submittal of an application for a SWFP, WTCCFP, EFP, or MWFP for specific wireless facility(ies) following the effective date of the lease, license or other agreement.

§ 12.52.060 DESIGN, AESTHETIC AND DEVELOPMENT STANDARDS.

In order to ensure compatibility with surrounding land uses, protect public safety and natural, cultural, and scenic resources, preserve and enhance the character of residential neighborhoods and promote attractive nonresidential areas, in addition to all other applicable requirements of this code, all WTFs in the PROW shall be located, developed, and operated in compliance with the following standards set forth in this section, unless the Director approves an exception subject to the findings required by Section 12.52.100, Exceptions.

(A) General requirements. All facilities that are located within the PROW shall be designed and maintained as to minimize visual clutter, and reduce noise and other impacts on and conflicts with the surrounding community in accordance with this chapter.

(B) Traffic safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety, and shall comply with the most recent edition of the California Manual on

Uniform Traffic Control Devices (MUTCD) and any other traffic control rules, regulations or ordinances of the City.

(C) Space occupied. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

(D) Location.

(1) The preferred location for a WTF shall be on existing infrastructure such as utility poles or street lights (without traffic signals). The infrastructure selected shall be located at alleys, streets and/or near property line prolongations. If the facility is not able to be placed on existing infrastructure in accordance with this subsection, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not technically feasible, in addition to all other application requirements of this chapter.

(2) All WTFs proposed to be located in the PROW next to property on which is located single-family or multi-family dwelling units, shall comply with the following restrictions:

(a) PROW Along Side Yard Setback or Alley: If a WTF is proposed to be located in the PROW adjacent to a side yard setback or alley on a property on which single-family or multi-family development is located, the WTF shall not be located within ten (10) feet of the living area of any residential dwelling unit.

(b) PROW Along Front Yard Setback: If a WTF is proposed to be located in the PROW adjacent to the front yard setback of a property on which single-family or multi-family development is located, the WTF shall not be located within 25 feet of the living area of any residential dwelling unit.

(c) The location of generators on major wireless facilities shall be governed by Sections 12.52.060 and 12.52.230(B)(3). Procedures and requirements for a backup power supply on major wireless facilities that qualifies as transmission equipment of an eligible facility shall be governed by procedures and requirements for eligible facilities unless the proposal constitutes a substantial change.

(3) As used herein in paragraph (D)(2), the term "living area" means the interior habitable area of a dwelling unit, accessory dwelling unit or guest house but does not include a garage or any accessory structure not used for living area.

(4) The distance between a proposed WTF and the residential dwelling unit shall be measured from the property line (of the lot on which the dwelling unit is located nearest to the proposed WTF) to nearest wall of the residential dwelling unit.

(5) No WTF shall be located within the PROW or any poles, infrastructure, buildings or other structures of any kind in the PROW, in any of the following locations or sites:

(a) On any decorative lighting or pole surrounded by or adjacent to ~~in~~ the Historic Commercial Downtown zone;

~~(b) On any decorative lighting or poles along historic Route 66, including portions of Huntington Drive, Shamrock Avenue and Foothill Boulevard;~~

~~(c)~~ In the PROW 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.

(dc) On any decorative lighting or decorative poles located within any other PROW in the City.

(6) Each component part of a WTF 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 PROW, or safety hazards to pedestrians and motorists, or interference with any path of travel or other disability access requirements imposed under federal or state law.

(7) A WTF shall not be located within any portion of the PROW in a manner that interferes with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health and safety facility.

(8) Any WTF mounted to a communications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods in the PROW shall have and maintain a minimum setback of 18 inches from the front of a curb.

(9) To conceal the non-antenna equipment, applicants shall install all non-antenna equipment (including but not limited to all cables) underground to the extent technically feasible. If such non-antenna equipment is proposed within an underground utility district formed pursuant to Chapter 13.16 of Title 13 of this code, and the type of non-antenna equipment has been exempted by the City Council from undergrounding pursuant to Sections 13.16.080 or 13.16.090 or any other provision of the code, the non-antenna equipment shall comply with the requirements of this section if the Director finds that such undergrounding is technically feasible and undergrounding is required for building, traffic, emergency, disability access, or other safety requirements. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of wireless communications services.

(E) Concealment or Stealth Elements. Stealth or concealment elements may include but are not limited to:

- (1) Radio frequency transparent screening;
- (2) Approved, specific colors;
- (3) Integrating the installation into existing utility infrastructure;
- (4) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.
- (5) Controlling the installation location pursuant to Subsection (D) of this section.

(F) Collocation. The applicant and owner of any site on which a WTF is located shall cooperate and exercise good faith in collocating facilities on the same support structures or site. Good faith shall include sharing technical information to evaluate the feasibility of collocation, and may include negotiations for erection of a replacement support structure to accommodate collocation. A competitive conflict to collocation or financial burden caused by sharing information normally will not be considered as an excuse to the duty of good faith.

(1) All WTFs shall make available unused space for collocation of other facilities, including space for these entities providing similar, competing services. Collocation is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a significant period of time. In the event a dispute arises as to whether

a permittee has exercised good faith in accommodating other users, the Director may require the applicant to obtain a third-party technical study at applicant's expense. The Director may review any information submitted by applicant and permittee(s) in determining whether good faith has been exercised.

(2) All collocated and multiple-user facilities shall be designed to promote facility and site sharing. Communication towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities and equipment buildings, shall be shared by site users whenever possible.

(3) No collocation may be required where it can be shown that the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing WTFs or failure of the existing facilities to meet federal standards for emissions.

(4) When antennas are co-located, the Director may limit the number of antennas with related equipment to be located at any one site by any provider to prevent negative visual impacts.

(5) Failure to comply with collocation requirements when feasible or cooperate in good faith as provided for in this section is grounds for denial of a permit request or revocation of an existing permit.

(G) Radio frequency standards; noise.

(1) WTFs shall comply with federal standards for radio frequency (RF) emissions and interference. No facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters or operate in a manner that will degrade or interfere with existing communications systems as stipulated by federal law. Failure to meet federal standards may result in termination or modification of the permit.

(2) WTFs and any related equipment, including backup generators and air conditioning units, shall not generate continuous noise in excess of 40 decibels (dBa) measured at the property line of any adjacent residential property, and shall not generate continuous noise in excess of 50 dBa during the hours of 7:00 a.m. to 10:00 p.m. and 40 dBa during the hours of 10:00 p.m. to 7:00 a.m. measured at the property line of any nonresidential adjacent property. Backup generators shall only be operated during emergencies, power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

(H) Additional standards. Consistent with federal and state laws and regulations, the City Council may further establish design and development standards pursuant to rules and guidelines, including but not limited to, relating to antennas, new, existing and replacement poles, wind loads, obstructions, supporting structures, screening, accessory equipment, landscaping, signage, lighting, security and fire prevention.

(I) Modification. To the extent authorized by state and federal laws and regulations, at the time of modification of a WTF, 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. If the proposed modification qualifies as an eligible facility, then the provisions governing eligible facilities apply, ~~unless the proposal constitutes a substantial change.~~

§ 12.52.070 STANDARD CONDITIONS OF APPROVAL.

All WTFP approvals for facilities located or proposed to be located in the PROW, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section, in addition to any conditions imposed by the approval authority pursuant to this chapter and the rules and guidelines. The approval authority shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this chapter.

(A) Permit term. A WTFP shall be valid for a period of ten (10) years, unless it is revoked sooner in accordance with this chapter or pursuant to any other provision of federal or state law that authorizes the City to issue a WTFP with a shorter term, or such WTFP is extended pursuant to Section 12.52.170. At the end of the term, the WTFP shall automatically expire. Except as otherwise provided in paragraph (1) (a), any other permits or approvals issued in connection with any collocation, modification or other change to the facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend the ten-year term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

(1) Eligible Facility Permits. In addition to the provisions of Subsection (A), the following provisions apply.

(a) The city's grant or grant by operation of law of an EFP will not extend the term, if any, for any ministerial permit or other underlying prior regulatory permit, approval or other authorization. Accordingly, the term for an EFP approval shall be coterminous with the ministerial permit and other underlying permit, approval or other prior regulatory authorization for the subject tower or base station. This condition shall not be applied or interpreted in any way that would cause the term of the underlying permit for the modified facility to be less than 10 years in total length, unless such underlying permit is abandoned or revoked pursuant to this code or any other provision of federal or state law.

(b) Accelerated Approval 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 eligible facilities request pursuant to Section 6409(a), such EFP approval shall automatically expire one (1) year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of any previously approved EFP 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 any equipment, components, structures and improvements approved under the invalidated EFP approval when it has submitted an application for a SWFP under Section 12.52.050 for those WTFs before the 1-year period ends. If the SWFP is denied, the permittee shall remove all its equipment, components, structures and improvements before the 1-year period ends.

(c) No Waiver of Standing. The approval of an EFP (either by express approval or by operation of law) 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) and/or any eligible facilities approval pursuant to Section 6409(a) (whether by the approval authority or by operation of law).

(B) Strict compliance with approved plans. Any application filed by the permittee for a ministerial permit to construct or install the WTF, generator and other equipment and structures that are located in the PROW approved by a WTFP must incorporate the WTFP approval, all conditions associated with the WTFP approval and the approved photo simulations into the project plans (the "approved

plans”). The permittee must construct, install, operate and maintain the facility and related equipment and structures in strict compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the WTF, must be submitted in a written request subject to the Director’s prior review and approval. With respect to EFPs, the director may revoke the EFP approval if the director finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by Section 6409(a) or the FCC in 47 C.F.R. Section 1.6100(b)(7), or any successor regulation (see Section 12.52.020 (Definitions) and 12.52.050(E) of this chapter).

(C) Build-out period. The WTF approval will automatically expire one year from the MTWP approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved facility under this code, and any other permits or approvals required by any federal, state or other local public agencies with jurisdiction over the subject property, the eligible 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 thirty (30) days prior to the automatic expiration date in this condition.

(D) Maintenance obligations. 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 substantial compliance with the approved plans and all conditions in the WTFP. 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.

(E) Property maintenance. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved plans are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP. The permittee further acknowledges that failure to maintain compliance with this condition may result in a code enforcement action.

(F) 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 (“Governing Laws”) applicable to the permittee, the subject property, the WTF and any use or activities in connection with the use authorized in the WTFP, which includes without limitation any laws applicable to human exposure to RF emissions. 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 Governing Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Municipal Code, any permit, any permit condition or any Governing Laws, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Code, any permit, any permit condition or any Governing Laws.

(G) 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 or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. Impacts of radio frequency emissions on the environment, to the extent that such emissions are compliant with all Governing Laws, are not “adverse impacts” for the purposes of this condition. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction hours authorized

by the 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 or the Director's designee may issue a stop work order for any activities that violate this condition.

(H) Inspections – emergencies. The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other 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's officers, officials, staff or other designee while any such inspection or emergency access occurs to the extent not inconsistent with City requirements.

(I) Permittee's contact information. The permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the 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 and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.

(J) Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the WTF approved by the permit is removed in its entirety from the PROW, an insurance policy or policies of public liability insurance which shall be in the form and substance satisfactory to the City, and shall be maintained until the term of the permit ended and the facility is removed from the PROW. The insurance shall comply with the minimum limits and coverages and provisions set forth in the rules and guidelines, and as otherwise established from time to time by the City, and which fully protect the City from claims and suits for bodily injury, death, and property damage.

(K) Indemnification.

(1) The permittee, and if applicable, the owner of the WTF upon which the facility is installed in the PROW, shall agree in writing to defend, indemnify, protect and hold harmless City, its elected and appointed officials, officers, boards, commissions, agents, consultants, employees, volunteers and independent contractors serving as City officials (collectively "Indemnitees"), from and against any and all claims, actions, or proceeding against the Indemnitees or any of them, to attack, set aside, void or annul, an approval of the Director or Development Review Committee concerning the permit and the construction, operation, maintenance and/or repair of the facility. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, reasonable attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The permittee shall also agree not to sue or seek any money or damages from the City in connection with the grant of the permit and also agree to abide by the City's ordinances and other laws. 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 the permittee's expense.

(2) Additionally, to the fullest extent permitted by law, the permittee, and every permittee and if applicable, the owner of the WTF upon which the facility is installed in the PROW, shall jointly and severally, shall defend, indemnify, protect and hold the City and its elected and appointed officials, officers, boards, commissions, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including,

but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the City for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the WTF, or to any work done by or use of the PROW by the permittee, owner or operator of the facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the City and its elected and appointed officials, officers, boards, commissions, agents, consultants, employees and volunteers and independent contractors serving as City officials.

(L) Performance security. Prior to issuance of any WTFP, the permittee shall pay for and provide a performance bond or other form of security that complies with the following minimum requirements.

(1) The security shall expressly survive the duration of the permit term and shall remain in effect until the facility is fully and completely removed and the site reasonably returned to its original condition, to cover the removal costs of the facility in the event that use of the facility is abandoned or the approval is otherwise terminated.

(2) The security shall be in a format and amount approved by the Director and City Attorney's office. The amount of security shall be as determined by the Director to be necessary to ensure proper completion of the applicant's removal obligations. In establishing the amount of the security, and in accordance with Government Code Section 65964(a), the Director shall take into consideration information provided by the applicant regarding the cost of removal of the facility and all related structures and equipment. The amount of the security instrument shall be calculated by the applicant as part of its application in an amount rationally related to the obligations covered by the security instrument. The permittee shall be required to submit the approved security instrument to the Director prior to issuance of any WTFP for the proposed facility.

(3) Security shall always be imposed if the WTF is located in a PROW adjacent to any residentially zoned property or residential uses.

(M) Acceptance of conditions. The WTFP shall not become effective for any purpose unless/until a City "Acceptance of Conditions" form, in a form approved by the City Attorney's office, has been signed and notarized by the applicant/permittee before being returned to the Director within ten (10) days after the determination letter has been served on the applicant and published on the City's website in accordance with Section 12.52.060(A). The permit shall be void and of no force or effect unless such written agreement is received by the City within said ten-day period.

§ 12.52.080 DIRECTOR DECISION ON WIRELESS TELECOMMUNICATIONS FACILITY PERMIT APPLICATIONS.

(A) General. Procedures for approval authority review and appeal of decisions on WTFP applications are set forth in this section and in the rules and guidelines that are published on the city's website.

(B) Director Review, Decision and Notice. Upon receipt of a complete application for a WTFP pursuant to this chapter, the Director or his/her designee shall carry out administrative review of the application and all pertinent information, materials and documentation. The Director may approve, or conditionally approve an application for a WTFP only after the Director makes all of the findings required in Section 12.52.090. The Director may impose conditions in accordance with Sections 12.52.060 and 12.52.070. Within five (5) days after the Director approves or conditionally approves an application under this section, the Director shall issue a written determination letter, and shall serve a copy of the determination letter on the applicant at the address shown in the application.

(C) Conditional approvals. Subject to any applicable limitations in federal or state law, and in addition to the standard conditions of approval required by Section 12.52.080, nothing in this section is intended to limit the City's authority to conditionally approve an application for a WTFP to protect and promote the public health, safety and welfare in accordance with this chapter and the rules and guidelines that are published on the city's website.

(D) Appeal. The Director's decision on an application for a WTFP may be appealed to the Development Review Committee in accordance with Section 12.52.190(B) of this chapter.

§ 12.52.090 FINDINGS.

(A) Findings Required for All Applications. No permit shall be shall be approved or conditionally approved for any wireless telecommunications facility or wireless telecommunications collocation facility subject to this chapter unless all of the following findings are made by the Director:

(1) All notices required for the proposed deployment have been given by the applicant.

(2) The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter and use the PROW pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to enter and use the PROW.

(3) The applicant has demonstrated that the WTF complies with all applicable dimensions, slope, configuration, design, aesthetic and development standards required by this chapter.

(4) General landscaping considerations as outlined in this chapter or the rules and guidelines, when applicable, have been complied with to complement the facility, structures and antenna, provide an attractive environment and preserve natural features and elements.

(5) The applicant has demonstrated that the WTF will not interfere with access to or the use of the PROW, existing subterranean infrastructure, or the City's plans for modification or use of such PROW location and infrastructure.

(6) The applicant has demonstrated that the WTF will not cause any interference with city or other governmental emergency operations, as evidenced by competent evidence.

(7) The proposed WTF has been designed to minimize its visual and environmental impacts, including but not limited to through the utilization of stealth technology and concealment elements in accordance with the requirements of this section and the rules and guidelines that are published on the city's website.

(8) The applicant has demonstrated that the proposed WTF is in compliance with all federal and/or state requirements, including but not limited to, FCC and CPUC requirements, and to all applicable RF emissions standards and all other requirements of any federal and/or state agency.

(9) The applicant has demonstrated that the proposed WTF complies with all noise standards and limits imposed by this section or the permit.

(10) The applicant has demonstrated that the proposed WTF has been designed and located in compliance with all applicable provisions of this Chapter and all applicable Construction Codes.

(11) The proposed WTF has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

(12) The applicant has submitted a statement of its willingness agreement to allow other carriers to collocate on the proposed WTF wherever technically and economically feasible and where collocation would not harm community compatibility.

(13) The proposed WTF conforms with all applicable provisions of this section and federal and state law.

(14) The findings required by this Subsection shall be in addition to any other findings required for approval of a ministerial permit under this code.

(B) Additional findings for Facilities Not Collocated. To approve a wireless telecommunications antenna that is not collocated with other existing or proposed WTFs or a new or replacement ground-mounted antenna, monopole, or lattice tower, the Director shall be required to also find that collocation or siting on an existing structure is not feasible because of technical, aesthetic, or legal consideration including that such siting:

(1) Would have more significant adverse effects on views or other environmental considerations;

(2) Would impair the quality of service to the existing facility; or

(3) Would require existing WTFs at the same location to go off-line for a significant period of time.

(C) Required Findings for EFP Approval.

(1) The director shall approve or conditionally approve an application for an EFP pursuant to Section 6409(a) and this section if the director makes all of the following findings:

(a) The applicant has provided all forms, notices, information, materials, and documentation for the proposed facility required by this section;

(b) The proposed facility is for the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station;

(c) The proposed facility does not constitute a substantial change to the physical dimensions of the existing wireless tower or base station, as defined in Section 12.52.020; and

(d) The proposed facility otherwise qualifies as an eligible facility under then-existing provisions of Section 6409(a).

(2) Criteria for Denial. In addition to any other alternative recourse permitted under federal law, and consistent with all applicable federal laws and regulations, the director may deny without prejudice an application for approval of an EFP when the director finds that the proposed facility:

(a) Violates any legally enforceable standard or permit condition related to compliance with generally applicable disability access, Construction Codes, and/or other traffic, public health and safety codes;

(b) Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect;

(c) Involves the replacement of the entire support structure; or

(d) Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.

(3) Denial without Prejudice. Any denial of an eligible facility request shall be without prejudice to the applicant or the facility. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for an eligible facilities request as appropriate.

(4) Deemed Approved.

(a) If the city fails to act on an EFP application within the 60-day review period referenced in Section 12.52.050(F)(2) (subject to any tolling pursuant to written agreement or notice of incomplete application pursuant to Section 12.52.050(G)(2)), the applicant may provide the city written notice that the time period for acting has lapsed.

(b) An EFP deemed approved pursuant to Section 6409(a) shall comply with all applicable Construction Codes, traffic, or other health and safety requirements of the code deemed applicable by the director, including, without limitation, obtaining an encroachment permit from the city and any authorization or permit needed by the owner of the facility or pole.

(5) Effect of Changes to Federal Law. This subsection does not and shall not be construed to grant any rights beyond those granted by Section 6409(a) and its implementing federal regulations. In the event Section 6409(a) or applicable regulations are stayed, amended, revised or otherwise not in effect, no modifications to an eligible facility shall be processed or approved under this subsection C or any other provision of this code.

§ 12.52.100 EXCEPTIONS, DIRECTOR FINDINGS.

(A) General requirements. An exception from the strict locational, physical, or design, or development requirements of Section 12.52.070, may be granted by the Director in his/her discretion, when it is shown to the Director's satisfaction, based on substantial evidence, any of the following:

(1) Because of special, unique circumstances applicable to the proposed location and/or the proposed WTF, the strict application of the requirements of the section would deprive the applicant of privileges enjoyed by other permittees in the vicinity operating a similar facility; or

(2) Denial of the facility as proposed would violate federal law, state law, or both; or

(3) A provision of this section, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

(B) Application requirements. An applicant may only request an exception at the time of applying for a WTFP. The request must include both the specific provision(s) of this section 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) Burden. The applicant shall have the burden of establishing the basis for any requested exception.

(D) Scope; Conditions. The Director shall limit its exception to the extent to which the applicant demonstrates such an exception is necessary to reasonably achieve its reasonable technical service objectives. In addition to the standard conditions of approval pursuant to Section 12.52.070, the Director may adopt other conditions of approval as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other wireless providers seeking to locate any facility in the area where such property is situated and that are reasonably necessary to promote the purposes in this section and protect the public health, safety and welfare.

(E) Prohibited locations; no exception. Notwithstanding any other provision of this section, SWFs are prohibited in and no exception shall be granted by the Director, on any location or site within a PROW for which approval cannot be obtained by any federal or state agency with jurisdiction over the proposed facility.

§ 12.52.110 NONEXCLUSIVE GRANT.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the PROW of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

§ 12.52.120 BUSINESS LICENSE.

A permit issued pursuant to this Chapter shall not substitute for any business license otherwise required under this code.

§ 12.52.130 TEMPORARY SMALL WIRELESS FACILITIES.

(A) Emergency deployment. 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 small wireless facility, subject to such reasonable conditions that the Director deems necessary.

(B) Exclusions; removal. A temporary small wireless facility shall not be permitted for maintenance activities or while awaiting an expected entitlement or pending plan review, and the allowance of a temporary small wireless facility during an emergency shall not be considered to establish a permanent use of such a facility after the emergency has ended, as declared by the City Manager or other appropriate federal, state, or local official. Any temporary small wireless facilities placed pursuant to this section must be removed within five days after the date the emergency is lifted. Any person or entity that places temporary small wireless facilities pursuant to this Subsection must send a written notice that identifies the site location and person responsible for its operation to the Director as soon as reasonably practicable.

§ 12.52.140 OPERATION AND MAINTENANCE STANDARDS.

(A) All WTFs must comply at all times with the following operation and maintenance standards:

(1) Each facility shall be operated and maintained to comply with all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

(2) No facility shall be operated and maintained in any manner that causes any interference with any emergency operations of the City and any other public agency.

(3) Each facility shall be operated and maintained in compliance with this chapter, and all other local, federal and state laws and regulations.

§ 12.52.150 RADIO FREQUENCY (RF) EMISSIONS AND OTHER MONITORING REQUIREMENTS.

(A) In addition to the reports and clearances required as part of the application, the permittee, owner and operator of a WTF shall submit within ninety (90) days of beginning operations under a new or amended permit, ~~and every five years from the date the facility began operations,~~ a technically sufficient report ("monitoring report") that demonstrates all of the following:

(1) The facility is in compliance with all applicable federal regulations, including but not limited to, the FCC's RF emissions standards as certified by a qualified radio frequency emissions engineer; and

(2) The facility is in compliance with all provisions of this section and the City's conditions of approval.

§ 12.52.160 NO DANGEROUS CONDITIONS OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any WTF which in whole or in part rests upon, in or over any PROW, 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 WTF unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

§ 12.52.170 PERMIT EXTENSION.

(A) Time of application. A permittee may apply for extensions of its WTFP in increments of no more than ten years and no sooner than 180 days (six months) prior to expiration of the permit. Any request for an extension that is filed less than 180 days (six months) prior to expiration shall require a new permit in accordance with the application and procedural requirements of the then-current requirements of this code.

(B) Application requirements. In addition to all other requirements of this section, the permittee's application for extension shall include proof that the permittee continues to have the legal authority to occupy and use the PROW for the purpose set forth in its WTFP, that the facility site as it exists at the time of the extension application is in full compliance with all applicable City permits issued for the site, and shall be accompanied by an affidavit and supporting documentation that the facility is in compliance with all applicable FCC and other governmental regulations. At the Director's discretion, additional studies and information may be required of the applicant. Grounds for non-renewal of the WTFP shall include, but are not limited to, the permittee's failure to submit the affidavit or proof of legal authority to occupy or use the PROW. The burden is on the permittee to demonstrate that the facility complies with all requirements for an extension.

(C) Director decision. If a WTFP has not expired at the time a timely application is made for an extension, the Director may administratively extend the term of the WTFP for subsequent ten-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, all provisions set forth in Subsection (B), above, and any other applicable provisions of this code that are in effect at the time the permit extension is granted. The Director's decision shall be issued in the form of a written determination letter in

accordance with Section 12.52.060(A). The Director's decision on an application for the extension of a WTFP shall be final and conclusive and not be appealable to the City Council.

§ 12.52.180 CESSATION OF USE OR ABANDONMENT.

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(A) A WTF is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless communications services for ninety (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 an unpermitted site) within ten 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 Subsection shall constitute a violation of any approvals and be grounds for enforcement pursuant to Section 12.52.190.

§ 12.52.190 REVOCATION OR MODIFICATION, REMOVAL; APPEAL.

(A) Revocation or modification of WTFP by Community Development Director. The Director may modify or revoke any WTFP and any other related permits required by the code if the operation or maintenance of the facility violates any of the permit's terms or conditions, this chapter, the code, or any other local, state or federal laws in accordance with the following procedures.

(1) When the Director has reason to believe that grounds exist for the modification or revocation of a WTFP, he/she shall give written notice by first-class mail, postage prepaid thereof to the permittee setting forth a statement of the facts and grounds. The permittee shall have not less than ten (10) days from date of deposit of the Director's notice in the mail to submit a written response and supporting documentation to the Director prior to the Director's decision. The Director's decision shall be issued in writing in accordance with the procedures set out in Section 12.52.060(A).

(2) The Director may revoke or modify the WTFP and any related permits if he/she makes any of the following findings:

(a) The WTFP or other permit(s) has expired as provided for in Section 12.52.080: Permit Expiration.

(b) The facility has been abandoned as provided in Section 12.52.180: Cessation of Use or Abandonment.

(c) The permittee has failed to comply with one or more of the conditions of approval, this chapter or any other provision of this code.

(d) The facility has been substantially changed in character or substantially expanded beyond the approval set forth in the permit.

(3) If the Director determines that modification of the WTFP or other permit(s) is warranted, he/she may impose any revised or new conditions that he/she deems appropriate based on his/her other findings.

(B) Appeal. Decisions of the Director to modify or revoke a WTFP or other related permits shall be subject to the administrative review by the Development Review Committee in accordance with the following provisions:

(1) The effectiveness of any decision of the Community Development Director to suspend or revoke a WTFP shall be stayed during: (a) the appeal period set forth in Subsection (2) of this Section 12.52.190(B); and (b) the pendency of any appeal.

(2) Any person whose WTFP is suspended or revoked by the Director may appeal to the Development Review Committee by filing a written appeal with the City Clerk within 14 days after the decision of the Director; provided, however, that if the 14 days expires on a date that City Hall is not open for business, then the appeal period shall be extended to the next city business day. Such appeal shall indicate the ground(s) upon which the appeal is based.

(3) Failure to file a timely written appeal deprives the Development Review Committee of jurisdiction to hear the appeal.

(C) Development Review Committee Review.

(1) Upon the filing of a timely appeal, the Development Review Committee shall hold a hearing on the suspension or revocation of the WTFP. Notice of the time, date and place of the hearing shall be mailed to the permittee, or shall be personally delivered, at least ten days prior to the date of the hearing.

(2) The following procedures shall govern the hearing conducted by the Development Review Committee. All parties involved shall have a right to: (a) offer testimonial, documentary and tangible evidence bearing on the issues; (b) be represented by counsel; and (c) confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing may be continued for a reasonable time for the convenience of a party or a witness.

(3) At the conclusion of the hearing, or at any time within 30 days thereafter, the Development Review Committee shall render a decision. The Development Review Committee may affirm, modify or reverse the action of the Director. The decision of the Development Review Committee shall be made in writing, shall be supported by findings, and shall be final.

(4) No later than three city business days after the Development Review Committee's decision, notice of the decision and a copy thereof shall be mailed by first-class mail, postage prepaid, to the appellant. Such notice shall contain the substance of the following statement: "You are hereby notified that the time within which judicial review of this decision may be sought is governed by Cal. Code of Civil Procedure § 1094.6."

(C) Judicial Review. Judicial review of the decision of the Development Review Committee may be sought in accordance with California Code of Civil Procedure §§ 1094.5 et seq. or as otherwise permitted by law.

(D) Permittee's removal obligation. Upon the expiration date of the WTFP, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, or final decision on appeal, whichever occurs latest, the WTFP shall become null and void, and the permittee, owner or operator shall completely remove its facility. 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 PROW within 30 days, unless a longer period is approved by the City, at no cost or expense to the City. If the facility is located on a WTF owned by a public utility or private

entity, the public utility or private property owner shall also be independently responsible for the expense of timely removal and restoration.

(E) Failure to remove. Failure of the permittee, owner, or operator to promptly remove its facility and restore the PROW and any city-property thereon to its original condition within 30 days (or such longer period approved by the City) after expiration, earlier termination, or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code, and be grounds for:

- (1) Prosecution;
- (2) Calling of any bond or other assurance required by this section or conditions of approval of permit;
- (3) Removal of the facility by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
- (4) Any other remedies permitted under this code.

(F) Summary removal. In the event the Director determines that the condition or placement of a WTF located in the PROW constitutes a dangerous condition, obstruction of the PROW, 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.

(G) Removal of facilities by City. In the event the City removes a WTF in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee 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.

(H) Non-exclusive remedies. Each and every remedy available for the enforcement of this section shall be non-exclusive and it is within the discretion of the authorized inspector or enforcing attorney to seek cumulative remedies set forth in this code, except that multiple monetary fines or penalties shall not be available for any single violation of this section.

§ 12.52.200 DEEMED GRANTED.

In the event that a WTFP application is deemed granted by rule of federal or state law, all conditions, development and design standards, and operations and maintenance requirements imposed by this section are still applicable and required for the installation, and all other applicable ministerial permit requirements shall apply.

§ 12.52.210 NONCONFORMING WIRELESS FACILITIES .

(A) A legal nonconforming WTF is a facility that was lawfully constructed, installed, or otherwise deployed in the PROW prior to the effective date of this chapter in compliance with all applicable City, state and federal laws and regulations, and which facility does not conform to the requirements of this section.

(B) Legal nonconforming facilities shall comply at all times with the City, state and federal laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal nonconforming facility which fails to comply with applicable laws, ordinances, regulations or the conditions of approval may be required to conform to the provisions of this section.

(C) Modifications to legal nonconforming facilities may be permitted under the following circumstances.

(1) Ordinary maintenance may be performed on a legal nonconforming facility.

(2) Modifications may be made to an eligible facility, to the extent expressly required by Section 6409(a), subject to compliance with this chapter.

(D) Any nonconforming facility that was not lawfully installed, constructed or otherwise deployed in the PROW in violation of any applicable ordinances, laws or regulations in effect at the time of its deployment is an illegal use and shall be subject to abatement as a public nuisance in accordance with the code and/or any other applicable federal and/or state laws, and the owner thereof shall be subject to all civil and criminal remedies provided by the code and law.

12.52.220 EMERGENCY STANDBY GENERATORS ON MACRO-CELL TOWER SITES (GOVERNMENT CODE SECTION 65850.75 GENERATORS)

(A) Purpose and Applicability.

(1) This section and governs the installation of emergency standby generators on macro-cell tower sites on or within any public right-of-way in the city in accordance with the requirements of Government Code Section 65850.75.

(a) Procedures and requirements for emergency standby generators that do not qualify for nondiscretionary review under this subsection shall be governed by Section 112.52.230. An application that includes a backup power supply that qualifies as transmission equipment of an eligible facility shall be governed by procedures and requirements for eligible facilities unless the proposal constitutes a substantial change.

(c) Emergency standby generators on macro cell tower sites on private property, or on public property outside the public rights-of-way, are governed by Chapter 17.46 of Title 17 and not by this chapter.

(B) Eligibility Criteria. In addition to any other ministerial permit required by this code, an emergency standby generator proposed to be installed to serve a macro cell tower site shall be approved by the director on a nondiscretionary basis, subject to administrative review, if the director finds that the proposed generator meets all of the following eligibility criteria:

(1) The emergency standby generator is: rated below 50 horsepower, compliant with applicable air quality regulations, has a double-wall storage tank, not to exceed 300 gallons, and is mounted on a concrete pad.

(2) The macro cell tower site on which the emergency standby generator is proposed to be installed is an existing site that was previously permitted by the city.

(3) The emergency standby generator complies with all applicable state and local laws and regulations, including construction codes.

(4) The physical dimensions of the emergency standby generator and storage tank are cumulatively no more than 250 cubic feet in volume.

(5) The emergency standby generator shall be located not more than 100 feet from the physical structure of the macro cell tower or base station.

(C) Director Findings. The Director shall carry out administrative review of an application for an emergency standby generator for a macro-cell tower site submitted for non-discretionary review pursuant to this section to determine whether the proposed generator meets all of the requirements of Government Code Section 65850.75 as set forth in Subsection (B). The Director shall not approve the application unless the Director makes findings that the application meets all criteria set forth in Subsection (B).

(D) Application Content -- General Requirements. The Director shall develop permit application forms as the Director deems appropriate based on the requirements of this section and the rules and guidelines that are posted on the city's website, and make the forms available to applicants upon request. An application for the approval of the installation or modification of an emergency standby generator on major wireless facility site shall be provided by the applicant to the Director in writing on the city-approved form, and shall include the following information and documentation, in addition to all other information and documentation determined necessary by the Director as well as all other information and documentation required by the city as part of a complete application for the required permit. The requirements of this section may be supplemented by rules and guidelines adopted from time to time by the City Council or Director-implemented supplemental rules, regulations and procedures, and which shall be posted on the city's website. The applicant shall also submit any other application for a ministerial permit required by this code (such as an encroachment permit, excavation permit or building permit) concurrent with the emergency standby generator permit application.

(1) One Submittal. The application, and all supporting information and documentation, shall be given to the City in one submittal packet. If the generator is proposed for a new facility, or a collocation or other modification to an existing facility, the application and supporting documentation shall be given to the city in one submittal packet as part of the underlying facility application.

(2) Application contents. The application shall contain all of the following:

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

(b) A full written description of the proposed emergency standby generator, its purpose and specifications; and the type of emergency standby generator.

(c) All information and documentation, including without limitation, all information and documentation demonstrating that the proposed generator qualifies as an emergency standby

generator under Government Code Section 65850.75, in accordance with the eligibility criteria set forth in Section 12.52.220(A)(2)(a).

(d) Site Plan.

(i) The Site Plan shall show the location of the generator in relation to other structures, property lines, and the electrical service.

(e) Structural.

(i) For generators located on grade, specify the thickness and reinforcement of the concrete slab and how it is fastened with hardware including call outs and embedment depth.

(f) Electrical. Describe and specify all of the following:

- (i) Location of the generator in relation to the electrical service equipment.
- (ii) The maximum power in watts (KW) and the applied voltage of the generator.
- (iii) Transfer of the backup power to the building electrical system.
- (iv) Current ratings of the transfer equipment.
- (v) Manufacturer's listing and installation instructions.
- (vi) A single line diagram, stamped and signed by either an electrical engineer or an electrical contractor.

(g) Plumbing.

(i) Provide gas pipe sizing for natural gas installations.

(h) Manufacturer's Specifications.

- (i) The type of fuel, size of fuel tank, or size of natural gas line.
- (ii) The maximum kilowatt (KW) rating and the applied voltage.
- (iii) The transfer switch, manual or automatic, and the current ratings (AIC) of the transfer equipment.
- (iv) Manufacturer's listings and installation instructions for the generator.

(i) Fire Department.

(i) Review and permit from City Fire Department.

(j) Governmental agency compliance.

(i) Except as otherwise provided by Section 12.52.220(K), documentation establishing compliance with any permit or other clearance required by the South Coast Air Quality

Management District, CPUC and any other state, federal or local agency with jurisdiction over the proposed generator.

(k) All information and documentation demonstrating that the proposed generator complies with all other applicable requirements of Construction Codes, traffic and other public health and safety codes, and other provisions of federal or state law.

(l) A noise study in a form satisfactory to the Director or the Director's designee, which demonstrates the proposed generator and any related equipment will comply with the noise requirements of this chapter and the code.

(m) Photographs of the generator and an accurate visual impact analysis with photo simulations.

(n) A maintenance plan.

(o) 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.

(p) Any other studies or information required by the rules and guidelines that are posted on the city's website or as otherwise determined necessary by the Director.

(q) An application and processing fee, a deposit for independent consultant review, and a deposit for review by the city attorney's office, in amounts set by resolution by the City Council.

(E) Shot Clock: Timeline for review and action. The timeline for review of and action on an emergency standby generator shall begin to run when the application is submitted in writing to the Department but may be reset or tolled by mutual written agreement or upon the City's issuance of a notice of incomplete application to the applicant pursuant to this section. Applications shall be processed in conformance with the time periods and procedures established by applicable state law and regulations. The following timing requirements shall apply:

(1) 60 days - for an application to install an emergency power generator on a macro cell tower site that meets the requirements of Government Code Section 65850.75 pursuant to the criteria set forth in Section 12.52.220(B), the Director shall approve or deny the application within 60 days of submittal of the application, subject to all of the following:

(a) First Incomplete Notice -- Staff shall determine whether an application is complete or incomplete within ten (10) days of the City's receipt of the application, and shall notify the applicant in writing if the application is incomplete. The notice of incomplete application shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. Upon issuance of the incomplete notice, then the 60-day period shall be suspended.

(b) Subsequent Incomplete Notice -- Upon resubmittal of the application, a new 60-day period shall begin, during which the City shall determine the completeness of the application. In any subsequent review of the application following resubmittal after issuance of an incomplete notice, the City shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. In the case of any such subsequent notices of incomplete application, the 60-day period shall be suspended. Upon resubmittal, a new 60-day period shall begin until the applicant submits all the information, materials and documents identified by the City to render the application complete.

(c) More than one permit -- If the City requires more than one permit application for the installation of an emergency standby generator, all applications submitted concurrently shall be issued within the same 60-day period set forth in this section.

(d) Except as otherwise provided by state law, a completed application that the City has not approved or denied within 60 days of receiving the application or upon expiration of any tolling period shall be deemed approved.

(2) One Submittal. The applicant's response and submission of supplemental materials and information in response to any notice of incomplete application must be given to the City in one submittal packet. If the application is submitted in conjunction with an application for an underlying facility, and a notice of incomplete application was issued for the underlying facility, the supplemental materials and information for the proposed generator shall be submitted as part of one submittal packet for the facility.

(F) Conditions of Approval. Except as otherwise required by state law, all emergency standby generators on macro-cell tower sites shall comply with the standard conditions of approval set forth in Section 12.52.070 of this chapter.

(G) Operations and Maintenance Standards. Except as otherwise required by state law, all emergency standby generators on macro-cell tower sites shall comply with the operations and maintenance standards set forth in Section 12.52.140 of this chapter.

(H) Deemed Approved.

(1) If the city fails to act on an application for an emergency standby generator on a macro-cell tower site within the 60-day review period referenced in Subsection 12.52.220(E)(1) (subject to any tolling pursuant to written agreement or notice of incomplete application pursuant to Section 12.52.220(E)(1)(a) or (b), the applicant may provide the city written notice that the time period for acting has lapsed.

(2) The applicant shall provide written notice to the city at least seven (7) days prior to beginning construction of an emergency standby generator on a macro-cell tower site issued pursuant to a deemed approved application.

(3) An emergency standby generator deemed approved pursuant to Government Code 65850.75 shall comply with all applicable Construction Codes and other traffic, health and safety requirements of the code and obtain all other ministerial permits deemed applicable by the director.

(I) Ministerial Permits. All other related ministerial permits required under any applicable Construction Codes or other health and safety codes shall be required as a condition of approval of an application for deployment of a new emergency standby generator or replacement or modification of an existing emergency standby generator.

(M) Leases, Licenses and Agreements. In addition to all other requirements of this section, the applicant and the City may mutually agree, or to the extent authorized by state law the City may require, the execution of a written agreement establishing the particular terms and provisions under which the City will agree to installation of an emergency power standby generator on a macro-cell tower site in the PROW. The provisions of Section 12.52.050(K) shall apply. The shot clock provisions set forth in Section 12.52.220(E) shall not apply during any negotiations for any such lease, license or other agreement. The shot clock provisions set forth in Section 12.52.220(E) as applicable, shall commence upon the date of submittal of an application for a permit for the emergency standby generator for an individual macro-cell tower site following the effective date of the lease, license or other agreement.

(N) Revocation. The City may revoke the permit for an emergency standby generator on a macro-cell tower site that is determined to violate an applicable state or local law or regulation, including but not limited to, construction codes, and shall be entitled to enforce all state and local law with respect to the emergency standby generator.

(O) Consent and Authorization from Property Owner. Proof of consent or other authorization from the underlying property owner of the macro-cell tower site shall not be required as part of the initial application for an emergency standby generator permit. The applicant shall not install the emergency standby generator on the macro-cell tower site until the applicant provides documentation of such property owner consent or other authorization as required by the City.

(P) Effect of Changes to State Law. This section does not and shall not be construed to grant any rights beyond those granted by Government Code Section 65850.75. In the event Government Code Section 65850.75 is stayed, amended, revised or otherwise not in effect, no applications or modifications to an emergency standby generator shall be processed or approved under this section or any other provision of this code.

(Q) Sunset Clause. This Section shall remain in effect until January 1, 2024, and as of that date is repealed, unless the City Council adopts an ordinance to extend the provisions of this Division beyond that date.

12.52.230 OTHER POWER GENERATORS ON MAJOR WIRELESS FACILITY SITES (NON-GOVERNMENT CODE SECTION 65850.75 GENERATORS)

(A) Purpose and Applicability.

(1) This section establishes the procedures and requirements for power generators on major wireless facility sites if the proposed generator does not meet the criteria for nondiscretionary review of an emergency standby generator on a macro-cell tower site set forth in Section 12.52.220(A)(2)(a) and therefore does not qualify as an emergency standby generator on a macro-cell tower site under Government Code Section 65850.75. An application that includes a backup power supply that qualifies as transmission equipment of an eligible facility shall be governed by procedures and requirements for eligible facilities unless the proposal constitutes a substantial change.

(B) Requirements.

(1) WTFP. No power generator subject to this section shall be deployed on any major wireless facility site in the PROW unless submitted as part of and approved in conjunction with a WTFP application for the underlying wireless telecommunications facility.

(2) Exceptions. An exception approved by the Director pursuant to Section 12.52.100 shall be required for any application to install a power generator in the PROW in conjunction with deployment of any major wireless facility in the PROW.

(a) Fossil fuel generators or other similar noise or odor producing generators. In addition to all other findings required for approval of the Exception, the Director shall not approve any fossil fuel-powered backup power sources or other similar noise or odor producing generators unless the applicant demonstrates that it cannot feasibly achieve its power needs with batteries, natural gas powered generators, fuel cells, solar power or other similarly non-polluting, low noise-level means. As used in this subparagraph, the phrase "good cause" includes commercial impracticability, actual unavailability, and inability for alternative means to feasibly achieve the power needs of the facility.

The Director shall include findings on whether the applicant established good cause in his/her decision on the proposed minor CUP.

(i) Prohibited Locations. Notwithstanding any other provision of this chapter, the Director shall not grant an exception for a fossil fuel generator or other similar noise or odor producing generator proposed to be located in the PROW within 250 feet of any residence, educational institution or park.

(ii) The 250-foot distance shall be measured from the proposed generator to the nearest property line of the lot on which the residence, educational institution, or park is located.

(3) Compliance with chapter. In addition to the requirements of this Section, power generators shall comply with all other provisions of this chapter.

(4) Encroachment Permits. No power generator shall be deployed on any major wireless facility site subject to this Section without an encroachment permit approved by the Director that meets the requirements of this section, and approval of all other ministerial permits required under the Code.

(5) Construction Codes. Compliance with applicable Construction Codes and other health and safety standards shall be required as a condition of the installation, construction or other deployment of any proposed emergency standby generator for any major wireless facility site within the PROW as determined by the Director.

(6) Leases, Licenses and Agreements for City Infrastructure or Property in the PROW. In addition to all other requirements of this chapter, the City may require the execution of a written agreement establishing the particular terms and provisions under which the City will agree to installation of a power generator on a major wireless facility site subject to review under this subsection.

(a) Provisions. The agreement shall include, but not be limited to, provisions addressing the following: term; rents, fees and costs; inspection and maintenance requirements; indemnification of the city; insurance requirements; waiver of monetary damages against the city; removal, restoration and clean-up requirements; requirement to pay possessory interest taxes, if any; and such other provisions, terms and conditions deemed necessary and appropriate by the city based on the application, and consistent with federal and state law.

(b) Additional Permits. The agreement shall be in addition to, and not a substitute, for any other permit required by any provision of this chapter or code. The agreement shall be fully executed by the City and applicant prior to the applicant's submittal of any application for a power generator on a major wireless facility site under this subsection or any other provision of this code. In addition, all ministerial permits shall be obtained as a condition of the installation, construction or other deployment of any proposed power generator for any major wireless facility site within the PROW in accordance with applicable Construction Codes and other health and safety codes.

(E) Application Content -- General Requirements. The Director shall develop permit application forms as the Director deems appropriate based on the requirements of this section and the rules and guidelines, and make the forms available to applicants upon request. An application for the approval of the installation or modification of a power generator on major wireless facility site subject to this section shall be provided by the applicant to the Director in writing on the city-approved form, and shall include the following information and documentation, in addition to all other information and documentation determined necessary by the Director as well as all other information and documentation required by the city as part of an complete application for the required permit. The

requirements of this section may be supplemented by rules and guidelines adopted from time to time by the City Council or Director-implemented supplemental rules, regulations and procedures. The applicant shall also submit any other application for a ministerial permit required by this code (such as an encroachment permit, excavation permit or building permit) concurrent with the emergency standby generator permit application.

(1) One Submittal The application, and all supporting information and documentation, shall be given to the City in one submittal packet. If the generator is proposed for a new facility, or a collocation or other modification to an existing facility, the application and supporting documentation shall be given to the city in one submittal packet as part of the underlying facility application.

(2) Application contents.

(a) The application shall contain all information and documentation required by Section 12.52.220(D)(2); and

(b) Proof of property owner consent or authorization for installation or other deployment of the power generator; and

(c) Any other studies, information and/or documentation required by the rules and guidelines or as otherwise determined necessary by the Director.

(d) An application and processing fee, a deposit for independent consultant review,, and a deposit for review by the city attorney's office, in an amount set by resolution by the City Council.

(C) Additional Requirements. The following additional provisions of this chapter shall apply to applications submitted under this section.

(1) Section 12.52.070: Conditions of Approval.

(2) Section 12.52.140: Operations and Maintenance Standards.

(3) Section 12.52.160: No Dangerous Conditions or Obstructions Allowed.

(4) Section 12.52.180: Cessation of Use or Abandonment.

(5) Section 12.52.190: Revocation or Modification; Removal.

(D) Director Findings. The Director shall review the application to determine if the application meets all of the requirements of this section. The Director shall not approve the application for the power generator, subject to conditions, unless the Director finds that the proposed power generator complies with all requirements of this section, and makes all findings required for approval of the underlying WTFP as set forth in Section 12.52.090.

§ 12.52.240 EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. The provisions of this chapter shall further govern and supersede any conflicting provisions of the code with respect to the permitting and regulation of facilities in the PROW. In the event of a conflict between any provision of this chapter and other provisions of this code, this chapter shall control.

§ 12.52.250 EFFECT OF STATE OR FEDERAL LAW.

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(A) In the event it is determined by the City Attorney that state or federal law prohibits discretionary permitting requirements for certain WTFs, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Further, the permits required by this chapter for those facilities shall be deemed to be ministerial permits. Such a determination by the City Attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a discretionary permit, a ministerial wireless facilities permit shall be required prior to installation or modification of a facility, and all provisions of this section 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 section or the rules and guidelines, or deemed necessary by the Director, shall be imposed and administered as reasonable time, place and manner rules.

(B) If subsequent to the issuance of the City Attorney's written determination pursuant to Subsection (A) of this section, the City Attorney determines that the law has changed and that discretionary permitting is permissible, the City Attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The City Attorney's written determination shall be a public record.

(C) All WTFs shall be built and maintained in compliance with all federal and state laws including but not limited to the American with Disabilities Act (ADA).

(D) Changes in law. All WTFs shall meet the current standards and regulations of the FCC, the CPUC and any other agency of the federal or State government with the authority to regulate wireless telecommunications providers and/or WTFs. If such standards and/or regulations are changed, the permittee and/or wireless communications provider shall bring its facility into compliance with such revised standards and regulations within ninety (90) days of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal or state agency. Failure to bring facilities into compliance with any revised standards and regulations shall constitute grounds for the immediate removal of such facilities at the permittee and/or wireless telecommunications provider's expense.

§ 12.52.260. RULES AND GUIDELINES.

The City Council or the Director may adopt rules, guidelines, regulations and/or or policies by resolution, to implement and supplement provisions of this Chapter. Notwithstanding any provision of the code to the contrary, all wireless telecommunications facilities and wireless telecommunications collocation facilities and emergency standby generators shall comply with any such adopted rules, regulations or policies that are published on the city's website.

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. The City Clerk shall certify to the passage of this ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and this ordinance shall become effective thirty (30) days after its passage.

INTRODUCED this ___ day of ___, 2021.

PASSED, APPROVED AND ADOPTED this ___ day of ___, 2021, by the following vote:

Tom Adams, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Alice D. Atkins, CMC, City
Clerk
City of Monrovia

Craig Steele, City
Attorney City of Monrovia

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
§ CITY OF MONROVIA)

I, ALICE D. ATKINS, CMC, City Clerk of the City of Monrovia, California, do hereby certify that the foregoing Ordinance No. 2021-XX, an ordinance amending Title 12, "Streets, Sidewalks and Public Places" by adding Chapter 12.52, entitled "Small Wireless Facilities" of the Monrovia Municipal Code, been published pursuant to law, and was duly adopted and passed at a public hearing at a regular meeting of the City Council on the ___ day of ___, 2021, by the following vote:

AYES:
NOES:
ABSTAIN:
EXCUSED:

ATTEST:

Alice D. Atkins, CMC, City
Clerk City of Monrovia