

ORDINANCE NO. 2021-10

AN ORDINANCE OF THE CITY OF MONROVIA, CALIFORNIA, AMENDING TITLE 17, CHAPTER 17.46 ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES" OF THE MONROVIA MUNICIPAL CODE TO UPDATE THE ZONING REGULATIONS AND STANDARDS FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES AND WIRELESS TELECOMMUNICATIONS COLLOCATION FACILITIES ON PRIVATE PROPERTY IN ALL ZONES AND ON PUBLIC PROPERTY OUTSIDE OF THE PUBLIC RIGHTS-OF-WAY

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

SECTION 1. RECITALS. The purpose of this Ordinance is to amend the City's Municipal Code to update and provide uniform and comprehensive zoning standards and regulations applicable to wireless telecommunications facilities on private property, and on City and other publicly owned or leased property located outside of the public rights-of-way in the City of Monrovia, as follows:

A. This Ordinance amends Title 17, Chapter 17.46 of the Municipal Code to incorporate procedural rules covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6509(a)") applicable to wireless telecommunications facilities that qualify as "eligible facilities" under Section 6409(a) because such facilities do not substantially change the physical dimensions of towers or base stations involving the collocation of new transmission equipment, removal of transmission equipment or replacement of transmission equipment.

B. This Ordinance also amends Title 17, Chapter 17.46 of the Municipal Code to incorporate standards, rules and requirements consistent with the Declaratory Ruling and Third Report and Order issued by the Federal Communications Commission ("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"] relating to placement of small wireless facilities, as defined, and the imposition of timelines for state and local government to review and act on applications for small wireless facilities within their jurisdictional limits; and amending certain provisions regarding eligible facilities by adopting the final rule entitled *Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications*, 85 FR 78005-01 (published in Federal Register on December 3, 2020); and

C. By separate action the City will amend Title 12 "Streets, Sidewalks and Public Places" by adding Chapter 12.52 "Small Wireless Facilities in the Public Rights-of-Way" to comply with the terms of the Report and Order for small wireless facilities, eligible facilities and other wireless telecommunications facilities proposed within the public rights-of-way located in the City of Monrovia.

D. This Ordinance further amends Title 17, Chapter 17.46 to update the City's zoning provisions regulating wireless telecommunications facilities proposed on private property, and all wireless telecommunications facilities and wireless telecommunications collocation facilities proposed on any public property outside the public rights-of-way.

SECTION 2. On October 13, 2021 the Planning Commission of the City of Monrovia conducted a duly noticed public hearing to consider an amendment to this “Wireless Telecommunications Facilities” ordinance. At the hearing all interested persons were given an opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence, and testimony presented in connection with this ordinance amendment. Following the close of the public hearing, the Planning Commission adopted Resolution No. PCR2021-0005 recommending approval of this Ordinance No. 2021-10 to the City Council.

SECTION 3. On [REDACTED], the City Council of the City of Monrovia conducted a duly noticed public hearing on the amendment to this “Wireless Telecommunications Facilities” ordinance. At the hearing all interested persons were given an opportunity to be heard. The City Council received and considered the staff report and all the information, evidence, and testimony presented in connection with this ordinance amendment.

SECTION 4. Environmental Review

A. Pursuant to the California Environmental Quality Act (“CEQA”) and the City’s local CEQA Guidelines, City staff determined that Ordinance 2021-10 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 2021-10 (“project”); therefore, no further action is required under CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 CCR Section 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 proceeding 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 5. Section 17.08.020 “Special References Use Activity” of Chapter 17.08, Title 17 of the Monrovia Municipal Code is hereby amended by deleting “mCUP” and inserting “AR” (Administrative Review) into the *Requirement Review* section of the table for the “Wireless telecommunications collocation facility” and “Wireless telecommunications facility”; adding “AR” and “mCUP” requirements for Emergency Standby Generators for Macro Cell Tower Sites (Government Code Section 65850.75); and adding a “CUP” requirement for Power Generators on Other Major Wireless Facility Sites (Non-Government Code Section 65850.75), and shall read as follows:

<i>Special References Use/Activity</i>	<i>Requirement Review</i>	<i>Code Reference</i>
Wireless telecommunications collocation facility	AR or CUP	Chapter 17.46, § 17.46.050' for CUP procedures generally, see Chapter 17.52
Wireless telecommunications facility	AR or CUP	Chapter 17.46, § 17.46.050; for CUP procedures generally, see Chapter 17.52
Emergency Standby Generator for Macro-Cell Tower Sites on private property or public property outside of	AR	Chapter 17.46, § 17.46.210

public rights-of-way (Government Code Section 65850.75)		
Power Generators on Other Major Wireless Facility Sites on private property or public property outside of public rights-of-way)(Non-Government Code Section 65850.75)	mCUP	Chapter 17.46, § 17.46.220; for mCUP procedures generally, see Chapter 17.52

SECTION 6. Chapter 17.46 “Wireless Telecommunications Facilities” is hereby amended to read in its entirety as follows:

CHAPTER 17.46

WIRELESS TELECOMMUNICATIONS FACILITIES ON PRIVATE PROPERTY IN ALL ZONES AND WIRELESS TELECOMMUNICATIONS FACILITIES ON PUBLIC PROPERTY LOCATED OUTSIDE OF THE PUBLIC RIGHTS-OF-WAY

Sections:

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- 17.46.040** Location Preference Requirements
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- 17.46.060** Application for Permit
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- 17.46.160** No Dangerous Conditions or Obstructions Allowed
- 17.46.170** Permit Term; Extension
- 17.46.180** Cessation of Use or Abandonment
- 17.46.190** Removal and Restoration, Revocation or Revocation
- 17.46.200** Exceptions
- 17.46.210** Emergency Standby Generators on Macro Cell Tower Sites on private property or public property outside of public rights-of-way (Government Code Section 65850.75)
- 17.46.220** Power Generators on Other Major Wireless Facility Sites on private property or public property outside of public rights-of-way (Non-Government Code Section 65850.75)
- 17.46.230** Rules, Regulations and Policies

17.46.240	Effect on Other Ordinances
17.46.250	Effect of State or Federal Law

§ 17.46.010 PURPOSE.

The purpose and intent of this Chapter is to provide a uniform and comprehensive set of zoning regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city that are located on private property or public property outside the public rights-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with these wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of land uses in the city, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with state and federal laws, rules and regulations, and (4) to encourage new and more efficient technology in the provision of wireless telecommunications facilities.

§ 17.46.020 DEFINITIONS.

“Accessory equipment” any equipment associated with the installation of a wireless telecommunications facility, including but not limited to, cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“Administrative review” means the ministerial review of an application by the city relating to the review and issuance of a wireless telecommunications facility permit to determine whether the issuance of the permit is in conformity with the applicable provisions of this Chapter 17.46.

“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 city permits or other authorizations under this chapter.

“Base station” means, for purposes of an eligible facility under Section 6409(a) of the Spectrum Act, the same as defined by the FCC. in 47 C.F.R. Section 1.6100(b)(1), as may be amended or superseded, 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 city, state or other 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 zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
4. The term does not include any structure that, at the time the relevant application is filed with the city, state or other 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 to the side of a building, to the facade of a building, or to the side of another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure, but not to include the roof of any structure.

“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.

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

1. For purposes of an eligible facilities request under Section 6409(a) of the Spectrum Act, “collocation” means the same as defined by the FCC in 47 C.F.R. Section 6100(b)(2), as amended or superseded, which defines the 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.

2. For purposes of a wireless 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.
3. Except as otherwise provided in Subsection (1) or (2), 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" has a corresponding meaning.

"CPUC" or "Public Utilities Commission" means the California Public Utilities Commission or its lawful successor.

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

"COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

"Development Review Committee" or DRC" means the Development Review Committee as established in Chapter 17.52.

"Director" means the Community Development Director or the Director's designee.

"Eligible facility 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 6100(b)(3), as may be amended or superseded, 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), as may be amended or superseded, 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 city, state or local government under this definition.

"Emergency standby generator" means, for purposes of Section 17.46.210, 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.

"Existing" means, for purposes of an eligible facility under Section 6409(a) of the Spectrum Act, the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(5), as may be amended or superseded, 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 both wireless telecommunications facilities or wireless telecommunications collocation facilities, unless the context specifically limits it to one or the other.

“FCC” or “Federal Communications Commission” means the Federal Communications Commission or its lawful successor.

“Generator” means, for purposes of Section 17.46.220, any temporary or stationary generator used for the generation of electricity that does not meet the criteria set forth in paragraph (29) of subdivision (a) of Section 93115.4 of Title 17 of the California Code of Regulations.

“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 power generator, the place where wireless telecommunications 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 telecommunications facility” 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 tower site.

“Major Conditional Use Permit” or “Conditional Use Permit” (or “CUP”) means a major conditional use permit issued by the Planning Commission in accordance with the requirements of this chapter and Chapter 17.52.

“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, wireless telecommunications collocation facility or generator under this code.

“Minor Conditional Use Permit” or “mCUP” means a minor conditional use permit issued by the Development Review Committee (DRC) in accordance with the requirements of this chapter and Chapter 17.52.

“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.

“Permittee” means the recipient, or his/her/its heirs, successors, or assigns of a permit issued pursuant to this chapter or any predecessors to this chapter, or any operator, user, or lessee of any permitted wireless telecommunications facility or any wireless telecommunications collocation facility issued a permit pursuant to this chapter or any predecessors to this chapter.

“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.

“Public right-of-way” or “right-of-way” or “PROW” means any public street, public way, public alley or public place, 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.

“Reviewing Authority” means the Community Development Director, the Development Review Committee (DRC) or the Planning Commission (PC), as applicable, which has the authority to review and either grant or deny a wireless telecommunications facility permit, or wireless telecommunications collocation facility permit pursuant to this chapter.

“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.

“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) (also known as the “Spectrum Act”), as may be amended from time to time.

“Shot Clock” means the presumptively reasonable time frame within which the city must act on an application for or request for authorization to place, construct or modify a wireless telecommunications facility, wireless telecommunications collocation facility, or other personal wireless facility, as defined by federal or state law, and as may be amended from time to time.

“Site” means, for purposes of an eligible facility 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 as follows:

1. For towers outside the PROW, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.
2. For other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

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” means the same as defined by the FCC in 47 C.F.R. Section 1.6002(l), as may be amended or superseded, which defines the term as 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% 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%, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in this section), is no more than 3 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.

“Structure” means a pole, tower, or other building 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 (whether on its own or comingled with other types of services); and with respect to eligible facilities under Section 6409(a) of the Spectrum Act, means the same as defined by the FCC in 47 C.F.R. Section 1.6002(m) as may be amended or superseded.

“Substantial Change” means the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(7), or any successor regulation, which defines that term differently based on the type of eligible support structure (tower or base station) and location. For clarity, this definition 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.

1. For towers located outside the public right-of-way, a substantial change occurs when:
 - a. The proposed modification increases the overall height of the tower by more than 10% or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
 - b. The proposed modification involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or
 - c. The proposed modification involves the installation of more than the standard number of equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or
 - d. The proposed modification entails any excavation or deployment of transmission equipment outside the current site by more than 30 feet in any direction; the site boundary from which the thirty feet is measured excludes any access or utility easements currently related to the site.
2. For all base stations located outside the public right-of-way, a substantial change occurs when:
 - a. The proposed modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - b. The proposed modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the base station by more than six (6) feet; or
 - c. 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 10% larger in height or overall volume than any other existing ground-mounted equipment cabinets associated with the structure; or
 - d. The proposed modification involves excavation or deployment outside the current site.
3. In addition, for all towers and base stations located outside of the public right-of-way, a substantial change occurs when:
 - a. 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

- b. 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.
4. For purposes of this definition, changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall 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.

"Telecommunications tower" or "Tower" means as follows:

1. For purposes of an eligible facility 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), as may be amended or superseded, which defines the 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.
2. For any wireless facility that does not qualify as an eligible facility, a "telecommunications tower" or "tower" means 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 building-mounted tower, ground-mounted tower, or roof-mounted tower.

"Transmission Equipment" means, for purposes of an eligible facility 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" or "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” or “WTF” 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, and equipment buildings and other accessory structures. “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.

1. Exceptions: The term “wireless telecommunications facility” does not apply to 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 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 facilities 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 within a public right-of-way owned or granted by easement or lease, operated, or controlled by the city, the state or the federal government. Wireless telecommunications facilities within any city rights-of-way are governed by and subject to Chapter 12.52 of this code and not by this chapter.
 - i. Telephone, telegraph and cable television transmission facilities utilizing hard-wired or direct cable connections.

“Wireless telecommunications facility permit” or “WTFP” or “permit” means any approval or other permit required by this chapter prior to installation, collocation or modification of a wireless

telecommunications facility or wireless telecommunications collocation facility, including but not limited to, administrative review, major conditional use permit, minor conditional use permit and/or an exception.

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

§ 17.46.030 APPLICABILITY.

This chapter applies to all wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public rights-of-way as follows:

- A. All facilities for which applications were not approved prior to [REDACTED], shall be subject to and comply with all provisions of this chapter;
- B. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this Chapter governing the operation and maintenance (Section 17.46.150), cessation of use and abandonment (Section 17.46.180), removal and restoration (Section 17.46.190) of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities (Section 17.46.160); provided, however, that in the event a condition of approval conflicts with a provision of this chapter, the condition of approval shall control until the permit is amended or revoked.

§ 17.46.040 LOCATION PREFERENCE REQUIREMENTS.

- A. *Preferred Locations.* In order to minimize their visual, noise and other impacts on the surrounding community, wireless telecommunications facilities and wireless telecommunications collocation facilities are encouraged to locate in certain districts, zones, areas and locations, and on existing buildings and structures, in the following order of preference (“Preferred Locations”):
 - 1. Within NC, CRS, RCC, RCM, O/RD/LM, BE, M or P/QP zones if:
 - a. Collocated with existing facilities;
 - b. Building-mounted or roof-mounted to an existing or new building;
 - c. Mounted to an existing pole or a new pole used to replace an existing pole.
 - d. Mounted to a new telecommunications tower.
- B. *Discouraged Locations.* ~~Unless prohibited as set forth in Subsection C of this section,~~ wireless telecommunications facilities and wireless telecommunications collocation facilities shall only locate in any of the following districts, zones, lots, areas or locations

with the approval of a Major Conditional Use Permit in accordance with Chapter 17.52 and an Exception by the Planning Commission and any other permit required by this code ("Discouraged Locations"):

1. Zoning districts RF, RE, RL, RM, RM/RH, RH, HWP, HR, HCD, or ANF;

2. Any lot zoned for single family residential use;

3. Any lot occupied with a single family home;

4. Public property in or abutting residential zones or residential neighborhoods which is not located within a public right-of-way (provided that the use of any city -owned or leased public property shall also require approval of an agreement pursuant to Section 17.46.100).

5. On any parcel of real property in a non-residential zone which contains a lawful residential use; and any location within one hundred (100) feet, as measured from the exterior boundaries of the property, of a residential zone or a permitted residential use;

6. Planned Development and Specific Plan zones, if the zone or plan prohibits such facilities;

7. Planned Development and Specific Plan zones that are exclusively residential, unless the zone or plan specifically provides otherwise;

8. In Planned Development and Specific Plan zones that include a mix of residential and non-residential uses, those areas of a Planned Development or Specific Plan zone that are designated as residential, unless the zone or plan specifically provides otherwise;

9. Public property (excluding any public right-of-way) within or directly adjacent to RF, RE, RL, RM, RM/RH, RH, HWP, HR, HCD, or ANF zones;

10. Public property (excluding any public right-of-way) within any district, zone, area or location if mounted to a new pole that is not replacing an existing pole; or

11. Any public property (excluding any public right-of-way) 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.

~~C. Prohibited Locations. Notwithstanding any other provision of this chapter, wireless telecommunications facilities and wireless telecommunications collocation facilities shall be prohibited in the following locations:~~

~~1. On a lot zoned for single family residential use;~~

~~2. On a lot occupied with a single family home; and~~

~~3. In any Planned Development and Specific Plan zones, if the zone or plan prohibits such facilities.~~

D.C. Planned Development and Specific Plan Zones. Except as otherwise required

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regarding Discouraged Locations under subsection B the following provisions apply to new or proposed facilities in a Planned Development or Specific Plan zone:

1. In addition to any other permit required pursuant to this code, the installation of a new major wireless telecommunications facility or new major wireless telecommunications collocation facility, or the modification to an existing major wireless telecommunications facility or major wireless telecommunications collocation facility in a Planned Development or Specific Plan zone that specifically permits such facilities shall require a conditional use permit unless the zone or plan specifies a different permitting requirement.
2. In addition to any other permit required pursuant to this code, the installation of a new major wireless telecommunications facility or major wireless telecommunications collocation facility, or the modification to an existing major wireless telecommunications facility or major wireless telecommunications collocation facility in a Planned Development or Specific Plan zone that is silent or defers to the code in regards to such facilities, and is not a Discouraged Location, shall require a conditional use permit.
- ~~3.~~
4-3. If the proposed facility qualifies as an eligible facility, then the provisions governing eligible facilities apply and no CUP is required.~~unless there is a substantial change.~~

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ED. *Accessory Equipment.* In order of preference, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities shall be located underground, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is more technically feasible or more compatible with the city's aesthetic, design and development standards under the circumstances of the application and the facility in the alternative location contains screening or other stealth elements which eliminate the visibility of the facility from surrounding properties.

§ 17.46.050 WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- A. *Permits Required for Facilities on Private Property and Public Property Outside Public Rights-of-Way.* Other than facilities that are located within the public rights of way, which are governed by Chapter 12.52 of this code, no new wireless telecommunications facility or wireless telecommunications collocation facility shall be located within the city on any private property or any public property outside the public rights-of-way, unless the permits required by this Chapter have been obtained from the city. Other than facilities that are located within the public rights of way, which are governed by Chapter 12.52 of this code, no modification to a wireless telecommunications facility or wireless telecommunications collocation facility shall be made unless the permits required by this chapter have been obtained from the city. Such permits are in addition to any other permit required pursuant to this code.
- B. *No Speculative Facilities.* Any wireless telecommunications facility, wireless telecommunications collocation facility, and/or a telecommunications tower subject to this chapter, which is built on speculation and for which there is no wireless tenant, is prohibited within the city.
- C. *Types of Permits Required.* The level of permitting required for the installation or modification

of a wireless telecommunications facility or wireless telecommunications collocation facility on any private property or any public property outside the public rights-of-way in each zone shall be as shown in the following table:

	RF ¹ RE ¹ RL ¹	RM ¹ RM/ RH ¹	RH ¹	NC ¹	CRS ¹ RCC ¹	RCM ¹	OIRD ¹ / LM ¹	BE ¹	M ¹	P ¹ / QP ¹	HWP ¹ HR ¹ ANF ¹	HCD ¹	SP ¹ PD ¹
Small Wireless Facility - installed or mounted to an existing or replacement pole, tower, or structure; or installed or mounted to a new pole, tower or structure; or collocated with an existing facility	DL/E C/E	-DL/E C/E	C/E DL/E	AR	AR	AR	AR	AR	AR	AR	DL/EC/ E	DL/EC/E	**
Major Wireless Telecommunications Facility -installed or mounted to a new pole, or telecommunications tower structure	DL/E C/E	DL/EC /E	DL/E C/E	C	C	C	C	C	C	C	DL/EC/E	DL/EC/E	**
Major Wireless Telecommunications Facility – ground-mounted, building mounted or roof-mounted, installed or mounted to an existing or replacement pole or tower or structure, or collocated with an existing facility	DL/E C/E	DL/EC /E	DL/E C/E	C	C	C	C	C	C	C	DL/EC/E	DL/EC/E	**
Wireless Telecommunications Collocation Facility – Small Wireless Facility	DL/E C/E	DL/EC /E	DL/E C/E	AR	AR	AR	AR	AR	AR	AR	DL/EC/E	DL/EC/E	**
Wireless Telecommunications Collocation Facility – Major Wireless	DL/E C/E	DL/EC /E	DL/E C/E	C	C	C	C	C	C	C	DL/EC/E	DL/EC/E	**

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Facility													
Wireless Telecommunications Collocation Facility - collocation pursuant to Govt. Code Section 65850.6	P/A R	P/AR	P/A R	P/A R	P/AR	P/AR	P/AR	P/A R	P/AR	P/ AR	P/AR	P/AR	P/A R
Eligible Facilities Request-pursuant to Section 6409(a) and 47 C.F.R. Section 6.100(b)(7).	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR
Emergency Power Generator on Macro-Cell Tower Site (Gov. Code Sec. 65850.75) -- Complies with criteria in Section 17.46.210.C.1)	P/A R	P/AR	P/A R	P/A R	P/AR	P/AR	P/AR	P/A R	P/AR	P/A R	P/AR	P/AR	P/A R
Any Other Emergency Standby Power Generator (non-Gov. Code Section 65850.75) -- See Section 17.46.220)	mC UP	mCU P	mCU P	mC UP	mCUP	mCUP	mCUP	mC UP	mCUP	mC UP	mCUP	mCUP	mC UP

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

LEGEND	
Footnote 1	Wireless facilities are prohibited in the following locations: (a) on lots where single-family residences are located, (b) on lots zoned single-family residential, and (c) in any PRD or SP zone where wireless facilities are prohibited. See Section 17.46.040.C.
P	If an existing wireless telecommunications collocation facility was approved pursuant to Section 17.46.120, additional collocations are permitted if they meet the requirements of that section.
AR	Means the use is a permitted use, subject to administrative review by the Community Development Director for determination of compliance with all code requirements

C	Means the use requires a major conditional use permit (also abbreviated "CUP") approved by the Planning Commission. For general conditional use permit procedures, see Chapter 17.52.
mCUP	Means the use requires a minor conditional use permit (also abbreviated "mC") approved by the Development Review Committee. For general minor conditional use permit procedures, see Chapter 17.52.
DL	For the list of Discouraged Locations and permitting requirements, see Section 17.46.040.B.
E	Means the proposed facility in a Discouraged Location requires approval of an Exception by the Director pursuant to Sections 17.46.040.B and 17.46.200 in addition to any other permit requirement; <u>except that if the proposed facility requires a major conditional use permit granted by the Planning Commission, then the findings and decision on the Exception shall be made by the Planning Commission rather than by the Director.</u>
**	See Section 17.46.040.E above, the list of discouraged locations in 17.46.040.B and the Land Use Element of the General Plan for permitting requirements.

§ 17.46.060 APPLICATION FOR PERMIT.

- A. *Purpose.* This section sets forth the application submittal requirements for all permits required by this chapter. These requirements may be augmented by a resolution adopted by the City Council. 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 Federal Register on December 3, 2020); and all other federal regulations, FCC rulings and orders, and state law, regulations and orders applicable to the installation, modification and/or collocation of wireless telecommunications facilities.
- B. *Voluntary Pre-Submittal Conferences.* 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 and wireless telecommunications collocation facilities projects. This voluntary pre-submittal conference is not part of the application process, and does not cause the Shot Clock to begin, and is intended to facilitate and streamline the review process through informal discussion and consultation that includes, without limitation, the appropriate project classification, potential eligibility as a permitted or conditionally permitted use, 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 completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide

informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request for a voluntary pre-submittal conference.

C. *Shot Clock*. Timeline for review and action. In accordance with federal and/or state law, the timeline for review of and action on a wireless telecommunications facility application or wireless telecommunications collocation application shall begin to run when the application is submitted in writing to the Department but may be reset or tolled depending on the type of application upon the City's issuance of a notice of incomplete application to the applicant pursuant to Subsection D of this section, or by mutual agreement. 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 timing requirements shall apply:

1. Small Wireless Facility

- 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 reset or tolled pursuant to Section 17.46.060.D.~~(1)(a)~~ or D.1.(b) or by mutual written agreement.
- b. 90 days - for an application to collocate 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 reset or tolled pursuant to Section 17.46.060.D.~~(1)(a)~~ or D.1.(b), or by mutual written agreement.

2. Eligible Facilities Request

- a. 60 days – for an application for a modification of an existing wireless telecommunications facility that qualifies as an eligible facility defined in Section 6409(a), as codified in Section 17.46.020 of this chapter, 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 tolled pursuant to Section 17.46.060.D.~~(2)(a)~~ or D.2.(b), or re-set or tolled by mutual written agreement.

3. Major Wireless Telecommunications Facilities.

- a. 150 days - for an application for a new major wireless telecommunications facility that is not for collocation, the City will act upon the application within one hundred and fifty (150) days from the Department's receipt of the written application packet, unless the time period is tolled pursuant to Section 17.46.060.D.~~(3)(a)~~ or D.3.(b), or re-set or tolled by mutual written agreement.
- b. 90 days – for an application for a major wireless telecommunications collocation facility on an existing 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 tolled pursuant to Section 17.46.060.D.~~(3)(a)~~ or D.3.(b), or reset or tolled by mutual written agreement.

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D. *Resetting or Tolling of Shot Clock.* 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, material 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 reset or tolled as set forth in this subsection.

1. Small Wireless Facilities.

- 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 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 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, 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 is 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 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.

2. Eligible Facilities Request.

- a. First Incomplete Notice –Staff shall determine whether an eligible facilities application 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 30-day shot clock date shall be tolled 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 - For resubmitted applications following the initial notice of incomplete application, 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 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.

3. Major Telecommunications Facilities.

a. First Incomplete Notice – Staff shall determine whether an application 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 shall be tolled from the day 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. For resubmitted applications following the initial notice of incomplete application, 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 is 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 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.

E. *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.

F. *Determination of Shot Clock Date*. The shot clock is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of days of the shot clock period identified pursuant to subsection C.1.a or C.1.b (for small wireless facilities and other wireless telecommunications facilities excluding eligible facilities) or by the number of days of the shot clock identified pursuant to subsection C.2.a or C.2.b (for eligible facilities) and including any pre-application period asserted by the city; provided, that if the date calculated in this manner is a holiday, the shot clock date is the next business day after such holiday.

1. For purposes of this subsection F, 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 wireless telecommunications facility.

2. For purposes of this subsection F, the term "business day" means any day that is not a holiday, as defined in Subsection F.1.

G. *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 one-hundred fifty (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 application. No refunds will be provided for withdrawn applications.

H. *Application Content.* The Director shall develop application forms for permit applications as the Director deems appropriate based on the requirements of this chapter and any rules and regulations, 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 a wireless telecommunications collocation facility, shall be provided by the applicant to the Director in writing on the city-approved form, and shall include the following information, in addition to all other information determined necessary by the Director as well as all other information required by the city as part of a complete application for the required permit. The requirements of this section may be supplemented by written rules and regulations adopted from time to time by the city council.

1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization.
2. The type of facility, including a full written description of the proposed facility, its purpose and specifications, including, without limitation, all information and documentation demonstrating that the proposed facility qualifies for the type of permit applied for.
 - a. An application for approval of a small wireless facility shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as a small wireless facility as defined in this chapter and in accordance with the requirements of federal or state law.
 - b. An application for approval of an eligible facility request shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as an eligible facilities request as defined in this chapter and in accordance with the requirements of Section 6409(a) and related federal regulations.
 - c. An application for approval of a wireless telecommunications collocation facility shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as a major wireless telecommunications collocation facility as defined in this chapter and in accordance with the requirements of Government Code Section 65850.6.
 - d. An application for approval of a major wireless facility permit or major wireless telecommunications collocation facility shall include, but is not limited to, all information and documentation demonstrating that the proposed facility qualifies as a major wireless facility or major wireless telecommunications collocation

facility as defined in this chapter and in accordance with the requirements of this chapter.

3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the Director.
4. 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, the code and any rules and guidelines adopted 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 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.
11. An application and processing fee, a deposit for a consultant review as set forth in subsection I of this section, and a deposit for review by the city's attorney, in an amount set by resolution by the City Council.

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~~13-14.~~ Any other studies or information required by any rules and guidelines posted on the city's website or as otherwise determined necessary by the Director may be required.

- I. *Independent Expert.* The Director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility or wireless telecommunications collocation facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility or wireless telecommunications collocation facility and shall address any or all of the following:
 1. Compliance with applicable radio frequency emission standards;
 2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
 3. The accuracy and completeness of submissions;
 4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
 5. The applicability of analysis techniques and methodologies;
 6. The validity of conclusions reached or claims made by applicant;
 7. The proposal of alternative sites and alternative designs; and
 8. Any other specific technical issues designated by the city.

The cost of the review by the independent expert consultant shall be paid by the applicant through a deposit pursuant to a fee schedule resolution adopted by the City Council. All costs shall be reasonable and consistent with industry standards.

§ 17.46.070 DESIGN AND DEVELOPMENT STANDARDS FOR ALL FACILITIES ON PRIVATE PROPERTY OR ON PUBLIC PROPERTY LOCATED OUTSIDE THE PUBLIC RIGHTS-OF-WAY.

- A. *Basic Requirements.* All wireless telecommunications facilities and wireless telecommunications collocation facilities that are located on private property or located on public property outside of the public rights-of-way shall be designed and maintained so as to minimize visual, auditory, olfactory, circulation or traffic, and other health and safety impacts and aesthetic impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section.
- B. *General Guidelines.*
 1. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.
 2. Screening shall be designed to be architecturally compatible with surrounding

structures using appropriate techniques to camouflage, disguise, and/or blend into the environment including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

3. In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.
- C. *Traffic Safety.* All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
- D. *Antennas.* The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.
- E. *Building-Mounted and Roof-Mounted Facilities.* Except as expressly allowed otherwise by this Chapter, building-mounted and roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building to which the facility is mounted in color, texture and type of material. Screening shall not change the aesthetic character of the building or roof structure to which the facility is attached or mounted.
- F. *Facilities Mounted to a Telecommunications Tower.*
1. Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least eighteen (18) months after the date of application), light poles, and trees of comparable heights, and in areas where they will minimize aesthetic impacts.
 2. Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet Federal Communications Commission requirements. The applicant shall provide documentation satisfactory to the Director establishing compliance with this subsection.
 - a. No facilities mounted to a telecommunications tower shall:
 - i. Exceed sixty (60) feet if located in a preferred location; or
 - ii. Exceed forty-five (45) feet if an exception is granted for locating the proposed facilities in a discouraged location.
 - b. No telecommunications tower shall be installed within two (2) times its height from any public right-of-way.
 3. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.

4. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
 5. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
 6. Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the Director establishing compliance with this subsection.
 7. If a faux tree is proposed for the monopole installation (i.e. monopine, monopalm, etc.), it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, additional landscaping may be required to help integrate the faux tree into the surrounding area. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.
- G. *Accessory Equipment.* All accessory equipment associated with the operation of any wireless telecommunications facility or wireless telecommunications collocation facility shall be fully screened or camouflaged with stealth elements, and located in a manner to minimize their visibility to the greatest extent possible utilizing the following methods for the type of installation:
1. Accessory equipment for building-mounted or roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible. If not feasible, such accessory equipment may be located on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.
 2. Accessory equipment for facilities mounted to a telecommunications tower shall be visually screened by locating the equipment either within a nearby building, in an underground vault where feasible (with the exception of required electrical panels) or in another type of enclosed structure, which shall comply with the development and design standards of the zoning district in which the accessory equipment is located. Such enclosed structure shall be architecturally treated and/or adequately screened from view by landscape plantings, decorative walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.
- H. *Landscaping.* Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.

- I. *Signage.* Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not bear any signs or advertising devices other than certification, warnings or other signage required by law or permitted by the city.
- J. *Lighting.* No wireless telecommunications facility or wireless telecommunications collocation facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers.
- K. *Noise.*

- 1. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - a. At no time shall equipment noise from any facility exceed an exterior noise level of fifty (50) dBA at the facility's property line if the facility is located in a business, commercial or manufacturing zone or a planned development or specific plan zone that permits those uses, provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of such residential property, measured pursuant to the procedures specified in Chapter 9.44 of this code. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property, measured pursuant to the procedures specified in Chapter 9.44 of this code.
 - b. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the facility's property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this chapter.
- 2. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

- ~~3. At no time shall equipment noise from any facility exceed an exterior noise level of fifty (50) dBA at the facility's property line if the facility is located in a business, commercial or manufacturing zone or a planned development or specific plan zone that permits those uses, provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of such residential property, measured pursuant to the procedures specified in Chapter 9.44 of this code. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property, measured pursuant to the procedures specified in Chapter 9.44 of this code.~~
- ~~4-3. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the facility's property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable~~

Commented [AG1]: The text of (4) and (5) was moved above so this text is duplicative and should be deleted.

~~noise limitations under this code.~~

- L. *Security.* Each wireless telecommunications facility and wireless telecommunications collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.
- M. *Modification.* To the extent authorized by state and federal laws and regulations, at the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities. If the proposed modification qualifies as an eligible facility, then the provisions governing eligible facilities apply, ~~provided there is no substantial change.~~

§ 17.46.080 CONDITIONS OF APPROVAL FOR ALL FACILITIES.

A. General Conditions.

- 1. In addition to compliance with the requirements of this Chapter, upon approval, all wireless telecommunications facilities and wireless telecommunications collocation facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:
 - a. If as-built drawings have not been previously submitted, the permittee shall submit an as built drawing within ninety (90) days after installation of the facility.
 - b. The City Council finds that wireless facilities, by their nature, constitute a visual intrusion with long-term aesthetic impacts, and that it is in the public interest to allow telecommunications facilities only to the extent necessary to provide the telecommunications service that they are authorized to provide. If the permittee applies for a modification to a wireless facility, where feasible and commercially reasonable, as new technology becomes available that provides the same level of service to the public, the permittee shall: (1) place above-ground wireless telecommunications facilities or wireless telecommunications collocation facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Monrovia Municipal Code.
 - c. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within seven (7) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

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- i. Identity, including the name, address and 24-hour local or toll-free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - ii. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and Federal Communications Commission certification.
 - iii. Name, address and telephone number of the property owner if different than the permittee.
- d. Upon any transfer or assignment of the permit, the transferee or other new permittee shall comply with all requirements of the existing permit and all of its conditions of approval including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a State-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission and the California Public Utilities Commission. If the Director determines that the proposed operation is not consistent with the existing permit, the Director shall notify the permittee who shall either revise the application or apply for modification of the permit pursuant to the requirements of the Monrovia Municipal Code.
- e. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the city reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
- f. At all times, all required notices and signs shall be posted on the site as required by the Federal Communications Commission and California Public Utilities Commission, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
- g. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the Federal Communications Commission and antenna height standards adopted by the Federal Aviation Administration.
- h. If the Director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed Federal Communications Commission standards, the Director may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.
- i. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the City of Monrovia Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the Director in an

amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.)

- j. If a nearby property owner registers a noise complaint and such complaint is verified as valid by the Police Department, Code Enforcement, or other city department, the city may hire a consultant to study, examine and evaluate the noise complaint, and the permittee shall pay the fee for the consultant. The matter shall be reviewed by the Development Review Committee. If the Development Review Committee determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the Development Review Committee may impose that condition on the project after notice and a public hearing. (A condition incorporating the applicable noise limitations of this Chapter shall also be included in the conditions of approval.)
 - k. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the city, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit city from participating in a defense of any claim, action or proceeding. The city shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.
 - l. A condition setting forth the permit expiration date in accordance with Section 17.46.170 shall be included in the conditions of approval.
2. If a wireless telecommunications collocation facility is the subject of an application, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

§ 17.46.090 FINDINGS.

- A. *Findings Required for All Applications.* In addition to findings necessary to approve a major conditional use permit or minor conditional use permit, as applicable, no permit shall be granted for any wireless telecommunications facility or wireless telecommunications collocation facility subject to this chapter unless all of the following findings are made by the reviewing authority:
- 1. The proposed wireless telecommunications facility or wireless telecommunications collocation facility has been designed to minimize its visual and environmental impacts, including the utilization of stealth technology, when applicable.
 - 2. The proposed site has the appropriate zoning, dimensions, slope, design, and configuration for the development of a wireless telecommunications facility or wireless telecommunications collocation facility.

3. That general landscaping considerations as outlined in this Chapter, when applicable, have been complied with to complement the structures and antenna, provide an attractive environment and preserve natural features and elements.
 4. The proposed wireless telecommunications facility or wireless telecommunications collocation facility complies with all federal RF emissions standards and all other requirements of the FCC, CPUC, and any other federal and/or state agency.
 5. The applicant has demonstrated that the proposed wireless communications facility or wireless telecommunications collocation facility is in compliance with all federal and/or state requirements, including but not limited to, FCC and CPUC requirements, including but not limited to all applicable RF emissions standards and all other requirements of any federal and/or state agency.
 6. The proposed facility has been designed and located in compliance with all applicable provisions of this Chapter and all applicable Construction Codes.
 7. The applicant has demonstrated that the proposed facility will not cause any interference with city or other governmental emergency operations, as evidenced by competent evidence.
 8. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
 9. The applicant has submitted a statement of its agreement to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
 10. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this Chapter.
- B. *Additional Findings for Facilities Not Collocated.* In addition to all other findings required by this chapter, to approve a wireless telecommunications antenna that is not collocated with other existing or proposed wireless telecommunications facilities or a new or replacement ground-mounted antenna, monopole, or lattice tower, the reviewing authority shall be required to also find that collocation or siting on an existing structure is not feasible because of technical, aesthetic, or legal considerations 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 wireless telecommunications facility; or
 3. Would require existing wireless telecommunications facilities at the same location to go off-line for a significant period of time.

C. *Eligible Facilities Requests.*

1. Required Findings for Approval. In addition to all other findings required by this

Chapter, an eligible facilities request shall not be approved unless the Director makes all of the following findings:

- a. The proposed project facility is for the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station;
 - b. The proposed facility does not constitute a substantial change to the physical dimensions of the existing wireless tower or base station, as defined in this Chapter; and
 - c. The proposed facility otherwise qualifies as an eligible facility under then-existing provisions of Section 6409(a) and all applicable federal regulations.
2. Grounds for Denial. In addition to any other alternative recourse permitted under federal law, the Director may deny approval of an eligible facilities request when the Director finds that the proposed facility:
- a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification; or
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reasons.
3. Denial without Prejudice. Any denial of an eligible facility request shall be without prejudice to the applicant, the real property owner or the project. Subject to the application and submittal requirements in this Chapter, the applicant may immediately resubmit a permit application for an eligible facilities request.
4. 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.

§ 17.46.100 FACILITIES ON CITY PROPERTY LOCATED OUTSIDE THE PUBLIC RIGHTS-OF-WAY; AGREEMENT AND CONDITIONAL USE PERMIT REQUIREMENTS.

- A. *Application.* This section applies to all wireless telecommunications facilities or wireless telecommunications collocation facilities located on or proposed to be located on any city property outside the public rights-of-way. As used herein, "city property" means and includes all property owned, leased, managed or controlled by the city.
- B. *Requirements.* No approval granted under this Chapter for locating facilities on any city property outside of the public rights-of-way shall be effective until the applicant and the city have executed a written agreement establishing the particular terms and provisions under which the right to occupy such city property shall be used or maintained. Such agreement shall include, but not be limited to, the following:

1. Term.
2. Rents, fees and costs.
3. Inspection and maintenance requirements.
4. Indemnification of the city.
5. Insurance requirements.
6. Waiver of monetary damages against the city.
7. Removal, restoration and clean-up requirements.
8. Requirement to pay possessory interest taxes, if any.
9. Such other provisions, terms and conditions deemed necessary and appropriate by the city based on the application.

C. *Conditional Use Permit.* A conditional use permit approved by the Planning Commission pursuant to Section 17.46.040.B shall also be required for any proposed major wireless telecommunications facility or major wireless telecommunications collocation facility on any city property located outside the rights-of-way. The agreement referred to in Subsection B shall not be effective until approval of the conditional use permit by the city. In addition, all ministerial permits shall be obtained as a condition of the installation, construction or other deployment of the proposed facility.

§ 17.46.110 NONEXCLUSIVE GRANT.

No approval granted under this chapter to place or install any wireless telecommunications facility or wireless telecommunications collocation facility on any public property outside the public rights-of-way, shall confer any exclusive right, privilege, license or franchise to occupy or use the public property or public rights-of-way of the city for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

§ 17.46.120 WIRELESS TELECOMMUNICATIONS COLLOCATION FACILITIES.

A. *Purpose.* The purpose of this section is to comply with the requirements of California Government Code Section 65850.6, for which a Section 6409(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility subject to this chapter for which subsequent collocation is a permitted use and for which only a ministerial review is required. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility. For purposes of this Section 17.46.120 only, "collocation facility" shall have the meaning set forth in Government Code Section 65850.6, as amended or superseded. (See Section 17.46.020, definition of "collocation", paragraph (2).)

B. *Permit or Review Required.* In addition to any other permit required by this code, a wireless telecommunications collocation facility shall be subject to either an administrative review, a

minor conditional use permit or a conditional use permit. Whether the permit is an administrative review, a minor conditional use permit or a conditional use permit will depend upon whether the application is for an initial collocation facility or is for a subsequent collocation facility and the proposed facility's dimensions, bulk, size and location, based upon the type of permit that would be required by this chapter if a wireless telecommunications facility permit was instead requested.

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

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

D. Notwithstanding any other provision of this Chapter, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use pursuant to Government Code Section 65850.6 subject only to administrative review and any other ministerial permits, if all of the following requirements are met:

1. The wireless telecommunications collocation facility was approved after January 1, 2007, by discretionary permit issued by the city;
2. An environmental impact report was certified, or a negative declaration or mitigated negative declaration was adopted, for the wireless telecommunications collocation facility in compliance with CEQA; the requirements of Public Resources Code Section 21166 do not apply; and the collocation facility incorporates required mitigation measures specified in that environmental impact report, negative declaration, or mitigated negative declaration; and
3. The proposed wireless telecommunications facility otherwise complies with the requirements of California Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance

with all performance and maintenance requirements, regulations and standards in this chapter and the conditions of approval in the wireless telecommunications collocation facility permit;

4. Provided, however, only those collocations that were specifically considered when the relevant environmental document was prepared are a permitted use.
5. Before collocation, the applicant seeking collocation shall obtain all other applicable ministerial permit(s), as required pursuant to this code.

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

1. Increases the height of the existing permitted telecommunications tower or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility or Section 6409(a); or
2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

F. *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 65850.6. In the event Government Code Section 65850.6 is stayed, amended, revised or otherwise not in effect, no modifications to a wireless telecommunications collocation facility shall be processed or approved under this Section 17.46.120.

§ 17.46.130 BUSINESS LICENSE.

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

§ 17.46.140 EMERGENCY DEPLOYMENT.

A COW shall be permitted in all zoning districts for the duration of an emergency declared by the city or at the discretion of the Director.

§ 17.46.150 OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities and wireless telecommunications collocation facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner or operator within seven (7) days (unless a longer period has been approved by the Director): (i) after discovery of the need by the permittee, owner, operator or any designated maintenance agent or (ii) after the permittee, owner, operator or any designated maintenance agent receives notification from a resident or the Director.

- A. Each permittee of a wireless telecommunications facility or wireless telecommunications collocation facilities shall provide the Director with the name, address and 24-hour local or

toll-free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.

- B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored or damaged artificial foliage or other camouflage;
 6. Graffiti, bills, stickers, advertisements, litter and debris;
 7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Director.
- D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including Federal Communications Commission radio frequency emissions standards.
- F. Each facility shall be operated and maintained to comply at all times with the noise regulations of this Chapter, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the Director. Backup generators, if permitted, shall only be operated during emergencies, periods of power outages or for testing.
- G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
- H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

§ 17.46.160 NO DANGEROUS CONDITIONS OR OBSTRUCTIONS ALLOWED.

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

§ 17.46.170 PERMIT TERM; EXTENSION.

- A. A permit for a wireless telecommunications facility or wireless telecommunication collocation facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of ten (10) years no sooner than six (6) months prior to expiration of the permit.
- C. If a permit has not expired at the time application is made for an extension, the Director may administratively extend the term of the permit for subsequent ten (10) year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of this code that are in effect at the time the permit extension is granted.
 - 1. At the Director's discretion, additional studies and information may be required of the applicant.
 - 2. If the Director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of this code that are then in effect at the time of permit expiration, the Director shall refer the extension request to the Planning Commission.
- D. The request for an extension shall be decided by the Planning Commission if the permit expired before the application is made for an extension or if the Director refers the matter to the Planning Commission. After notice and a public hearing, the Planning Commission may approve, conditionally approve or deny the extension.

§ 17.46.180 CESSATION OF USE OR ABANDONMENT.

- A. A wireless telecommunications facility or wireless telecommunications collocation facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use

of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Director of any discontinuation of operations of thirty (30) days or more.

- C. Failure to inform the Director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
1. Prosecution;
 2. Revocation or modification of the permit;
 3. Calling of any bond or other assurance required by this article or conditions of approval of the permit;
 4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 5. Any other remedies permitted under this code.

§ 17.46.190 REMOVAL AND RESTORATION, REVOCATION OR ABANDONMENT.

- A. *Permittee's Removal Obligation.* Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility or wireless telecommunications collocation facility and restore the site to its prior condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property within ninety (90) days, at no cost or expense to the city. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.
- B. *Failure to Remove.* Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, 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 Chapter or conditions of approval of permit;
 3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this code.
- C. *Summary Removal.* In the event the Director determines that the condition or placement of any wireless telecommunications facility or wireless telecommunications collocation

facility located on private or public property outside the public rights-of-way constitutes a dangerous condition, or is 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 (5) 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 sixty (60) days, the facility shall be treated as abandoned property.

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

§ 17.46.200 EXCEPTIONS .

- A. *Required Findings.* Exceptions pertaining to any provision of this Chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority at a noticed public hearing if the reviewing authority makes any of the following findings:
1. Compliance with a particular requirement is technologically infeasible, would result in an unreasonable interference with signal quality, or would result in an effective prohibition of service. The applicant will be required to prove that there are no feasible alternatives to the exception request. An exception request may be subject to peer review conducted by a qualified RF engineering consultant selected by the city and paid for by the project applicant.
 2. Because of special, unique circumstances applicable to the proposed location, site and/or the proposed wireless telecommunications facility, the strict application of the requirements of the Chapter would deprive the applicant of privileges enjoyed by other permittees in the vicinity operating a similar wireless telecommunications facility.
 3. Denial of the facility as proposed would violate federal law, state law, or both.
 4. A provision of this Chapter, as applied to applicant, would deprive the applicant of its rights under state and/or federal law.
- B. *Conditions.* An exception may be granted subject to such conditions or other requirements that will meet the purposes and intent of this chapter.
- C. *Procedure.*
1. An applicant may only request an exception at the time of applying for a wireless

telecommunications facility permit or wireless telecommunications facility collocation permit.

2. Notwithstanding any other provision of this Chapter, a conditional use permit shall be required for a facility when an exception is requested, and for any facility proposed in a Discouraged Location.

D. *Burden.* The applicant shall have the burden of proving that denial of the facility as proposed would violate state and/or federal law, or the provisions of this Chapter, as applied to applicant, would deprive applicant of its rights under state and/or federal law, using the evidentiary standards required by that law at issue. The city shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

E. *Prohibitions.* Notwithstanding any other provision of this section, in no event shall an exception be granted to allow a wireless telecommunications facility or wireless telecommunications collocation facility to locate in any of the following districts, zones, areas or locations:

1. On a lot zoned for single family residential use;
2. On a lot occupied with a single family home; or
3. In any Planned Development and Specific Plan zones, if the zone or specific plan prohibits such facilities.

**§ 17.46.210 EMERGENCY STANDBY GENERATORS ON MACRO CELL TOWER SITES
(GOVERNMENT CODE SECTION 65850.75)**

A. *Purpose and Scope.* This section governs the installation of emergency power generators on macro-cell tower sites on private property in any zone or on public property outside the public rights-of-way, which is eligible for nondiscretionary review in accordance with Government Code Section 65850.75.

1. Procedures and requirements for power generators that do not qualify for nondiscretionary review under Government Code Section 54850.75 and this section shall be governed by Section 17.46.220 of this Chapter. Procedures and requirements for 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.
2. Emergency standby generators on macro cell tower sites and other power generators in public rights-of-way are governed by Chapter 12.52 of Title 12 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 power generator submitted for nondiscretionary review pursuant to this section to determine whether the proposed generator meets 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 macro-cell tower sites 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, 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. Applicant information. 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. Description. A full written description of the proposed emergency standby generator, its purpose and specifications; and the type of emergency standby

generator.

- c. Justification. 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. The Site Plan shall show the location of the generator in relation to other structures, property lines, and the electrical service.
- e. Structural. 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. 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. Code Compliance.
 - i. 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. Noise Study.
 - i. 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.
 - i. Photographs of the generator and an accurate visual impact analysis with photo simulations.
 - n. Maintenance.
 - i. A maintenance plan.
 - o. Exception.
 - i. 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. Additional Information.
 - i. Any other studies or information required by the city as determined necessary by the Director and posted on the city's website.
3. Fees. The application shall be accompanied by the fee established by resolution of the City Council. The fee will cover its costs associated with administering this section, and shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes.

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 subsection. 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 Subsection C of this section, 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 shall be submitted concurrently, and all permits shall be issued within the same 60-day period set forth in this subsection.
 - 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. *Revocation.* The city may revoke the permit for an emergency standby generator 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.
- G. *Consent or Authorization from Property Owner.* Proof of consent or other authorization from the underlying property owner 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 until the applicant provides documentation of such property owner consent or other authorization as required by the city.
- H. *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 power generator shall be processed or approved under this section or any other provision of this code.

- I. *Sunset Clause.* This Section 17.46.210 shall remain in effect until January 1, 2024, and as of that date is repealed, unless the State Legislature extends the effective date of Government Code Section 65850.75, in which case, this section shall remain in effect as long as Section 65850.75 or any successor statute remains in effect.

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

A. *Purpose and Scope.* 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 17.46.210.A.1 and therefore does not qualify as an emergency standby generator on a macro-cell tower site under Government Code Section 65850.75.

B. *Requirements.*

1. **Wireless Telecommunications Facility.** No power generator subject to this section shall be deployed on any major wireless facility site on private property or on public property outside the PROW unless submitted as part of and approved in conjunction with an application for the underlying wireless telecommunications facility on such property.
2. **Minor CUP.** A minor conditional use permit approved by the Development Review Committee pursuant to Chapter 17.52 shall be required for any application to install a power generator on private property or public property outside the PROW in conjunction with deployment of any major wireless facility on such property.
 - a. **Fossil fuel generators or other similar noise or odor producing generators.** An applicant who proposes to install a fossil fuel generator or other similar noise or odor producing generator shall submit information and documentation to show good cause why the facility 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 of alternative means to feasibly achieve the power needs of the facility. The DRC shall include findings on whether the applicant established good cause in its decision on the proposed minor CUP.
 - b. **Prohibited Locations.** Notwithstanding any other provision of this chapter, the DRC shall not grant an exception for a fossil fuel generator or other similar noise or odor producing generator proposed to be located on private property or public property outside the PROW if such generator would be within 250 feet of any residence, educational institution or park. 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. Other Permits. No power generator shall be deployed on any major wireless facility site subject to this section without 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 subject to this section as determined by the Director.
 6. Leases, Licenses and Agreements for Infrastructure on City Property Outside 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 on private property or public property outside the PROW in accordance with applicable Construction Codes and other health and safety codes.
- C. *Application Content -- General Requirements.* The Director shall develop permit application forms as the Director deems appropriate based on the requirements of this section and any city 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 a 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 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. The applicant shall also submit any other application for a minor conditional use permit and 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 17.46.210.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.

D. *Additional Requirements.* The following additional provisions of this chapter shall apply to applications submitted under this section.

1. Section 17.46.080: Conditions of Approval for All Facilities.
2. Section 17.46.150: Operations and Maintenance Standards.
3. Section 17.46.160: No Dangerous Conditions or Obstructions Allowed.
4. Section 17.46.180: Cessation of Use or Abandonment.
5. Section 17.46.190: Revocation or Modification; Removal.

E. *DRC Findings.* The DRC shall review the application to determine if the application meets all of the requirements of this section. The DRC shall not approve the application for the power generator, subject to conditions, unless the DRC finds that the proposed power generator complies with all requirements of this section, and also finds that the Director made all findings required for approval of the underlying wireless telecommunications facility or wireless telecommunications collocation facility as set forth in Section 17.46.090.

§ 17.46.230 RULES, REGULATIONS AND POLICIES

The City Council may adopt rules, 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 shall comply with any City Council-adopted rules, regulations or policies.

§ 17.46.240 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. In the event of a conflict between any provision of this Chapter and other provisions of this code, this Chapter shall control.

§ 17.46.250 EFFECT OF STATE OR FEDERAL LAW.

- A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, or wireless telecommunications collocation facilities, 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 an administrative review, minor conditional use permit (mCUP) or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, and all provisions of this Chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary permit. Any conditions of approval set forth in this Chapter or deemed necessary by the Director shall be imposed and administered as reasonable time, place and manner rules.
- B. If subsequent to the issuance of the city attorney's written determination pursuant to subsection A above, 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.

SECTION 7. 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 8. The City Clerk shall certify to the passage of this ordinance and shall cause the 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:

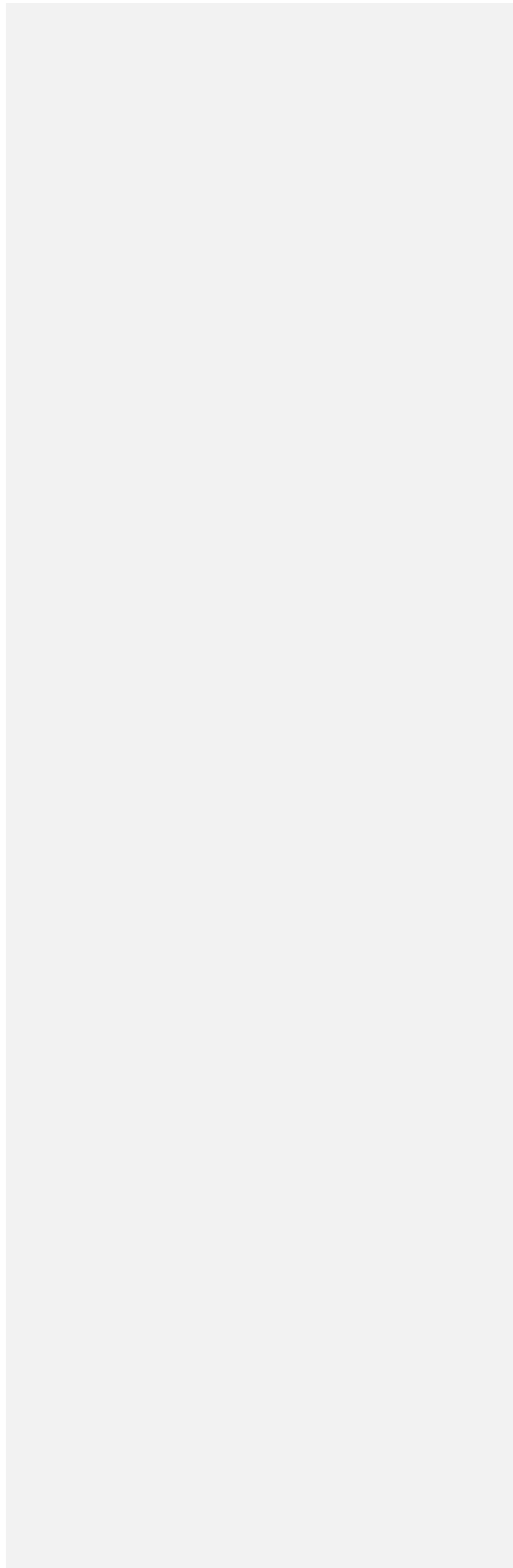
APPROVED AS TO FORM:

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 17 (Zoning) by amending in its entirety Chapter 17.46 entitled "Wireless Telecommunications 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