

ORDINANCE 1677

AN ORDINANCE OF THE SEAL BEACH CITY COUNCIL AMENDING CHAPTER 6.10 OF TITLE 6 OF THE SEAL BEACH MUNICIPAL CODE TO AMEND SECTION 6.10.010 AND SECTION 6.10.065, REPEAL SECTION 6.10.070, AND ADD NEW SECTIONS 6.10.070 AND 6.10.075 REGULATING SMALL WIRELESS FACILITIES AND ELIGIBLE FACILITIES IN THE IN THE PUBLIC RIGHTS-OF-WAY

THE CITY COUNCIL OF THE CITY OF SEAL BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. On January 28, 2019, the City Council considered the adoption of this Ordinance at a duly noticed public meeting, and on the basis of the record thereof finds the following facts to be true:

A. On September 27, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 83 FR 51867-01 (adopted September 26, 2018 and released September 27, 2018) [hereinafter “Report and Order”] relating to placement of small wireless facilities in public rights-of-way. The Report and Order took effect on January 14, 2019, and unless stayed by court or legislative action, or by further action by the FCC, states and local governments must comply with its terms.

B. The Report and Order purports to give providers of wireless services rights to utilize public rights of way and to attach so-called “small wireless facilities” to public infrastructure within the public rights-of-way, including infrastructure of the City of Seal Beach, subject to payment of “presumed reasonable”, non-recurring and recurring fees. The ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order.

C. Notwithstanding the limitations imposed on local regulation of small wireless facilities in the public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective”, i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; are (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements.) The Report and Order require that states and local governments adopt aesthetic standards no later than April 15, 2019.

D. Local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers.

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

F. The wireless telecommunications industry has expressed interest in submitting applications for the installation of "small cell" wireless telecommunications facilities in the City's public rights-of-way. Other southern California cities have already received applications for small cells to be located within the public rights-of-way.

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

H. The Seal Beach Municipal Code currently regulates wireless telecommunications facilities in the public right-of-way through the requirement for a conditional use permit (CUP) process in the Zoning Code (Title 11), requirements for encroachment/excavation permits and overall policies directed at telephone corporations in the public right-of-way. The existing standards have not been updated to reflect current telecommunications trends or necessary federal and state legal requirements. Further the primary focus of the current regulations is wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and/or practical issues that arise in connection with wireless telecommunications facilities deployed in the public right-of-way.

I. In addition to the Ruling and Order, state and federal law have changed substantially since the City last adopted regulations for wireless telecommunications facilities in the City. Such changes include modifications to "shot clocks" whereby the City must approve or deny installations within a certain period of time. State and federal

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

J. The public rights-of-way in the City of Seal Beach is a uniquely valuable public resource, closely linked with the City's natural beauty including the beach and coastline, and significant number of residential communities. The public right-of-way encompassed by Electric Avenue is historically significant as critical to development of a commuter electric railway line between Los Angeles and Newport Beach in the early Twentieth Century, and the Pier is historically significant as an example of an early development of coastal amusement along coastal areas, including the original pier site known as "Anaheim Landing", which is now registered as a California Historical Landmark. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public rights-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community. The regulations of wireless telecommunications installations in the public right-of-way are also necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.

K. It is the intent of the City Council in adopting this Ordinance to supersede regulations of the City that conflict with the Report and Order, and to establish consistent regulations governing deployment of small wireless facilities in the public rights-of-way, in order to more fully protect the public health, safety, and welfare. The City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to re-enact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of the Report and Order in the event the Report and Order is invalidated, modified, or limited in any way.

L. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent

with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, but includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

M. On January 28, 2019, the City Council of the City of Seal Beach conducted and concluded a duly noticed public hearing concerning the Municipal Code amendments contained herein as required by law and received testimony from City staff and all interested parties regarding the proposed amendments.

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

SECTION 2. The City Council of the City of Seal Beach hereby amends Section 6.10.010 (Definitions) of Chapter 6.10 (Cable, Video and Telecommunications) of Title 6 (Franchises) to include the following definitions:

“Action or to act: the approval authority’s grant of an application for a small wireless facility, eligible facility, or other wireless communications facility, or issuance of a written decision denying an application, pursuant to Section 6.10.070 or 6.10.075 of this chapter.

Antenna: any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves or radio frequency signals, including devices with active elements extending in any direction, and directional parasitic arrays with elements attached to a generally horizontal boom which may be mounted on a vertical support structure.

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

Antenna equipment: 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: an antenna and associated antenna equipment.

Applicant: 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.

Approval authority: the Director of Public Works designated to review and issue a decision on a proposed permit or other authorization under this chapter.

Authorization: any approval that the approval authority must issue under applicable law prior to the installation, construction or other deployment of a small wireless facility, eligible facility, or any other wireless communications facility under Section 6.10.070 or Section 6.10.075 of this chapter, including, but not limited to, encroachment permit, excavation permit, zoning approval and/or building permit.

Building or roof mounted: an antenna mounted on the side or top of a building or another structure (e.g., water tank, billboard, church steeple, freestanding sign, etc.), where the entire weight of the antenna is supported by the building, through the use of an approved framework or other structural system which is attached to one or more structural members of the roof or walls of the building.

C.F.R.: the Code of Federal Regulations.

Collocation (also known as “colocation” or “co-location”):

(1) For a small wireless facility subject to Section 6.10.070 of this chapter, “collocation” means: (a) mounting or installing an antenna facility on a pre-existing structure, and/or (b) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(2) For an eligible facility subject to Section 6.10.075 of this chapter, “collocation” has the meaning set forth in Section 6.10.075.B of this chapter.

(3) For any other wireless communication facility subject to Section 6.10.070 of this chapter, “collocation” means the location of 2 or more wireless, hard wire, or cable communication facilities on a single support structure or otherwise sharing a common location. Collocation shall also include the location of communication facilities with other facilities (e.g., water tanks, light standards, and other utility facilities and structures).

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

CPUC: the California Public Utilities Commission.

Decorative lighting : any light fixture that incorporates ornamental design features while also meeting the specific spread and lumen requirements dictated by the location and purpose. Design features may include post top and pendant bulbs, posts, bases, cross-arms, bollards and signage. Height, density and placement relative to nearby architectural features are also relevant to the design and purpose. Some examples in the City of Seal Beach include the Electric Avenue greenbelt, Seal Beach Pier and Main Street Business District.

Deployment: the installation, placement, construction, or modification of a small wireless facility, eligible facility or other wireless communications facility.

Director: the Public Works Director of the City of Seal Beach.

Dish antenna: a dish-like antenna used to link communication sites together by wireless transmissions of voice or data. Also called microwave dish antenna.

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

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

Eligible facility: as defined in Section 6409(a). See Section 6.10.075 of this chapter.

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

FAA: the Federal Aviation Administration.

Ground mounted: 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.

JFTB Los Alamitos: the Joint Forces Training Base, Los Alamitos, California, also known as the Los Alamitos Army Airfield.

Ministerial permit: – an excavation permit, encroachment permit, or building permit and any required ministerial permit application form and supporting documents required by the City.

Monopole: a single freestanding pole, post, or similar structure, used to support equipment associated with a single communication facility.

NEPA: the National Environmental Policy Act.

NHPA: the National Historical Preservation Act.

Naval Weapons Station (NWS): the Naval Weapon Station, Seal Beach, California.

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

Permittee: includes the applicant and all successors in interest to the Wireless Communications Facility Permit (WFCP) issued by the City pursuant to Section 6.10.070 or 6.10.075 of this chapter, and any related ministerial permit approved by the City.

Person: an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

Pole: 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.

Public right-of-way (PROW): any public road, highway, sidewalk or other area described in and subject to California Public Utilities Code Section 7901 or 7901.1, as interpreted by applicable case law, and owned, licensed, leased or otherwise under the control of the city.

RF: radio frequency.

Rules and Guidelines: The policies, rules, guidelines, regulations and procedures adopted from time to time by the City Council to administer and implement this section.

Section 6409(a): Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a) (the "Spectrum Act"), as may be amended.

Small wireless facility(ies): a facility that meets each of the following conditions:

(1) The facility—

(i) is mounted on structures 50 feet or less in height including its antennas as defined in this section; or

(ii) is mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

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

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

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

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

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

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

Structure: a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless communications service (whether on its own or comingled with other types of services).

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

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

Tower: any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna or similar apparatus above grade.

Whip antenna: an antenna consisting of a single, slender, rod-like element, which is supported only at or near its base. They are typically less than 6 inches in diameter and measure up to 18 feet in height. Also referred to as omnidirectional, stick or pipe antennas.

Wireless communications facility(ies) (WCF or WCFs): 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 comingled with other wireless communications services. Includes antennas, commercial satellite dish antennas, and equipment buildings. Does not include telephone, telegraph and cable television transmission facilities utilizing hard-wired or direct cable connections.

Wireless communications collocation facility: the same as a "wireless telecommunications collocation facility" is defined in Government Code Section 65850.6, as may be amended, which defines a "wireless telecommunications collocation facility" as a wireless telecommunications facility that includes collocation facilities; a "collocation

facility” as the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications colocation 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 Communications Facility Permit (WCFP): a permit issued by the City pursuant to this chapter, and including the following categories:

1. **Small Wireless Facility Permit (SMFP):** a permit issued by the Director pursuant to the requirements of Section 6.10.070 of this chapter for (a) the deployment of a new small wireless facility, or (b) the replacement of, collocation on, or modification of an existing small wireless facility.

2. **Eligible Facility Permit (EFP):** a permit issued for an eligible facility as defined in and subject to the requirements of Section 6.10.075 of this chapter.

3. **Maintenance Encroachment Permit:** an encroachment permit issued by the Director pursuant to Section 6.10.070 of this chapter to carry out minor modifications, minor emergency maintenance or repairs, or other routine maintenance or repairs to an existing WCF.

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

SECTION 2. The City Council of the City of Seal Beach hereby amends Subsection B of Section 6.10.065 (Telecommunications Services Provided by Telephone Corporations) of Chapter 6.10 (Cable, Video and Telecommunications) of Title 6 (Franchises) to read as follows: [new language is highlighted]

“6.10.065 Telecommunications Service Provided by Telephone Corporations.

A. The city council finds and determines as follows:

1. The Communications Act preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission (“CPUC”) is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related communications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

3. Public Utilities Code Section 234(a) defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

4. Public Utilities Code Section 616 provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."

5. Public Utilities Code Section 2902 authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Public Utilities Code Section 7901 authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers or abutments for supporting the insulators, wires and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Public Utilities Code Section 7901.1 confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner. Nothing in Section 7901.1 adds to or subtracts from any existing authority that municipalities have with respect to the imposition of fees.

8. Government Code Section 50030 provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of communications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide communications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

B. In recognition of and in compliance with the statutory authorizations and requirements set forth above, the following regulatory provisions are applicable to a telephone corporation that desires to provide communications service by means of facilities that are proposed to be constructed, installed or otherwise deployed within public rights-of-way:

1. The telephone corporation must apply for and obtain, as may be applicable, a Wireless Communications Facility Permit in accordance with Section 6.10.070 or Section 6.10.075 of this chapter and any other ministerial permit required by this code.

2. In addition to the information required by this code in connection with an application for a ministerial permit or a Wireless Communications Facility Permit, a telephone corporation must submit to the City the following supplemental information:

a. A copy of the certificate of public convenience and necessity-issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the communications service for which the facilities are proposed to be constructed in the public rights-of-way. Any applicant that, prior to 1996, provided communications service under administratively equivalent documentation issued by the CPUC may submit copies of that documentation in lieu of a certificate of public convenience and necessity.

b. If the applicant has obtained from the CPUC a certificate of public convenience and necessity to operate as a "competitive local carrier," the following additional requirements are applicable:

(1) As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has timely filed with the city a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the city during the calendar quarter in which the application is filed, so that the city can coordinate multiple projects, as may be necessary.

(2) If the applicant's proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(3) The applicant must inform the city whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The city's issuance of a ministerial permit, and/or Wireless Communications Facility Permit will be conditioned upon the applicant's compliance with applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

C. The city reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or communications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this section, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, and related matters; provided, however, that such regulatory rights and authority must be consistent with federal and state law

that is applicable to cable or communications services provided by telephone corporations.”

SECTION 3. Section 6.10.070 (Use of Public Rights-of-Way) of Chapter 6.10 (Cable, Video and Communications) of Title 6 (Franchises) is hereby deleted in its entirety.

SECTION 4. A new Section 6.10.070 (Wireless Communications Facilities in the Public Rights-of-Way) is hereby added to Chapter 6.10 (Cable, Video and Communications) of Title 6 (Franchises) as set forth in Exhibit “A” to this Ordinance, which is hereby incorporated as though set forth in full herein.

SECTION 5. A new Section 6.10.075 (Wireless Communications Facilities in the Public Rights-of-Way -- Eligible Facilities Requests) is hereby added to Chapter 6.10 (Cable, Video and Communications) of Title 6 (Franchises) as set forth in Exhibit “B” to this Ordinance, which is hereby incorporated as though set forth in full herein.

SECTION 6. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a) (the “Spectrum Act”), as may be amended, and all implementing federal regulations, FCC rulings and orders, and state law, regulations and orders (collectively “Governing Laws”), and believes that it is acting consistent with the current state of the Governing Laws in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or result in an effective prohibition of wireless telecommunications services in the public rights-of-way; but rather includes appropriate reasonable time, place and manner regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner so as to lawfully balance the legal rights of applicants under the Governing Laws while, at the same time, ensuring that the deployment of telecommunications services will not incommode the public use of the City’s rights-of-way, and will protect to the full extent feasible against the safety and land use concerns described herein, while treating all entities in an equivalent manner.

SECTION 7. Conflicting Code Provisions Superseded. The provisions of this Ordinance shall govern and supersede any conflicting provisions of the Seal Beach Municipal Code with respect to the permitting and regulation of wireless communications facilities and eligible facilities in the public right-of-way.

SECTION 8. CEQA Findings. The proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinance comprises a project for CEQA

analysis, it falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Adoption of this Ordinance will also enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. It is therefore not subject to the environmental review pursuant to CEQA Guidelines Section 15305, minor alterations to land use

SECTION 9. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 10. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 11. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 12. Effective Date. This Ordinance shall go into effect on the 31st day after its passage.

PASSED, APPROVED and ADOPTED by the Seal Beach City Council at a regular meeting held on the 11th day of February, 2019 by the following vote:

AYES: Council Members: Deaton, Massa-Lavitt, Moore, Sustarsic, Varipapa

NOES: Council Members: None

ABSENT: Council Members: None

ABSTAIN: Council Members: None

and do hereby further certify that Ordinance 1677 has been published pursuant to the Seal Beach City Charter and Resolution 2836.



Thomas Moore, Mayor

ATTEST:


Gloria D. Harper, City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Gloria D. Harper, City Clerk of the City of Seal Beach, do hereby certify that the foregoing ordinance is the original copy of Ordinance 1677 on file in the office of the City Clerk, passed, approved, and adopted by the City Council at a regular meeting held on the 11th day of February, 2019.

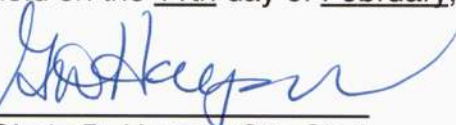

Gloria D. Harper, City Clerk

EXHIBIT "A"

CITY OF SEAL BEACH ORDINANCE 1677

**NEW SECTION 6.10.070 WIRELESS COMMUNICATIONS FACILITIES
IN THE PUBLIC RIGHTS-OF-WAY**

"6.10.070 Wireless Communications Facilities in the Public Rights-of-Way.

A. Purpose and Intent.

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

2. The procedures set forth in this section are intended to permit wireless communications facilities in the PROW that blend with their existing surroundings and do not negatively impact the environment, historic properties, aesthetics or public safety. The procedures prescribed by this section are tailored to the type of wireless communication facility that is sought. Collocation of facilities are preferred and encouraged, subject to all other provisions of this section.

3. This section is not intended to, nor shall it be interpreted or applied to:

a. Prohibit or effectively prohibit any wireless service provider's ability to provide wireless communications services;

b. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate wireless communications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;

c. Unreasonably discriminate among providers of functionally equivalent services;

d. Deny any request for authorization to place, construct or modify WCFs on the basis of environmental effects of radio frequency emissions to the extent that such WCFs comply with the FCC's regulations concerning such emissions;

e. Prohibit any collocation or modification that the City may not deny under federal or California State law; or

f. Otherwise authorize the City to preempt any applicable federal or state law.

4. Due to rapidly changing technology and regulatory requirements, and to further implement this section, the City Council may adopt written policies, rules, regulations and/or guidelines (collectively "Rules and Guidelines") by resolution governing WCFs in the PROW, which may include but are not limited to, requirements related to applications, notices, review procedures, development and design standards, conditions, and operation and maintenance requirements. The Director may adopt policies, procedures and forms consistent with this section and any Council-adopted Rules and Guidelines, which shall be posted on the City's website and maintained at the Department for review, inspection and copying by applicants and other interested members of the public. The City Council and the Director may update their rules, policies, procedures and forms in their discretion to adjust for new technologies, federal and/or state regulations, and/or to improve and adjust the City's implementing regulatory procedures and requirements, and compliance therewith is a condition of approval in every wireless communications facility permit.

B. Definitions.

For the purpose of this section, the following words and phrases have the meanings set forth below. Words and phrases not specifically defined in this section will be given their meaning ascribed to them in Section 6.10.010 or as otherwise provided in Section 6409(a), the Communications Act, or any applicable federal or state law or regulation.

Administrative review: ministerial review of an application by the City relating to the review and issuance of a for a wireless communications facility permit (WCFP), including review by the Director of Public Works to determine whether the issuance of a WCFP is in conformity with the applicable provisions of this section.

Application: any written submission to the City for the installation, construction or other deployment of a WCFP and related ministerial permits to obtain final approval of the deployment of a WCF at a specified location.

Day: a calendar day, except as otherwise provided in this section.

Rules and Guidelines: The policies, rules, guidelines, regulations and procedures adopted from time to time by resolution of the City Council to administer and implement this section.

C. Applicability.

1. This section applies to the siting, construction or modification of any and all WCFs located or proposed to be located within the PROW as follows:

a. All WCFs for which applications were not approved prior to the effective date of this section shall be subject to and comply with all provisions of this section.

b. All WCFs for which applications were approved and permits issued by the City prior to the effective date of this section shall not be required to obtain a new or amended WCFP until such time as this section so requires. If a WCF was lawfully constructed or installed within the PROW in accordance with applicable local, state or federal regulations prior to the effective date of this section but does not comply with the current standards, regulations and/or

requirements of this section, such WCF shall be deemed a legal nonconforming facility and shall also be subject to the provisions of Section 6.10.070.Y.

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

d. Any WCF proposed to be installed, modified or replaced on any City infrastructure located within the PROW, including but not limited to, any City-owned, leased or licensed pole, tower, base station, cabinet, structure, building, or facility of any kind. The City and an applicant may enter into a license, lease or other agreement in a form acceptable to the City, which includes, but is not limited to, terms relating to rent, inspection, operations and maintenance requirements, defense and indemnification, insurance requirements, waiver of monetary damages against the City, removal, restoration and clean-up requirements, and requirement for payment of any possessory interest taxes. Any such agreement shall not substitute for any permit required by this section or any other provision of this code.

e. All WCFs, notwithstanding the date approved, shall be subject immediately to the provisions of this section governing operation and maintenance standards (Section 6.10.070.O), radio frequency emissions and other monitoring requirements (Section 6.10.070.P), the prohibition of dangerous conditions or obstructions (Section 6.10.070.Q), cessation of use and abandonment (Section 6.10.070.S), revocation or modification; removal (Section 6.10.070.T), effect on other ordinances (Section 6.10.070.V), and state or federal law (Section 6.10.070.W), and the rules and guidelines adopted by resolution of the City Council. In the event a condition of approval conflicts with a provision of this section, the condition of approval shall control until the permit is amended or revoked.

2. Exemptions. This section does not apply to the following WCFs:

a. A WCF that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the FCC'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 WCF owned, leased and/or operated by the City or any other governmental agency.

e. Emergency medical care provider-owned and operated WCFs.

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

g. Any other WCF exempted from this code by federal law or state law, subject to submittal of documentation establishing the applicable exemption.

h. Any WCF proposed to be installed, placed, modified or replaced on any City-owned or controlled infrastructure located outside the PROW, including but not limited to, any City-owned, leased or licensed street lights, traffic light poles, wires, fiber-optic strands, conduit, and any other City-owned or controlled poles, towers, base stations, cabinets, structures, buildings, or facility of any kind located outside the PROW. Such WCFs shall require a license, lease or other agreement in the form and terms required by the City from time to time, which shall include, but not be limited to, terms relating to permit requirements, rent, inspection, operations and maintenance requirements, defense and indemnification, insurance requirements, waiver of monetary damages against the City, removal, restoration and clean-up requirements, and requirement for payment of any possessory interest taxes; and any and all other permits required by this code. Any such agreement shall be in addition to, and shall not substitute for, any permit required by any provision of this code.

i. Any WCF proposed to be installed, construed, modified, or replaced on any private property. (See Chapter 11.4.070)

j. Request for approval pursuant to Section 6409(a). Any requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409(a) will require an Eligible Facility Permit under Section 6.10.075 of this chapter.

D. General Small Wireless Facility Permit Requirements.

1. Permit required. A SWF shall not be constructed, installed, modified, or replaced in the PROW except upon approval of a SWFP in accordance with the requirements of this section, or an EFP in accordance with the requirements of Section 6.10.075, and all related ministerial permits.

2. Conflicting provisions. An application for a SWFP shall be processed in compliance with this section and the Rules and Guidelines adopted by resolution of the City Council, and any supplemental rules, regulations, procedures and forms adopted by the Director. Ministerial permits shall meet all requirements of this section and all other applicable provisions of this code, the Rules and Guidelines, and any such Director-adopted rules, regulations, policies and forms.. In the event of any conflict between the provisions of this section and any other provision of this code, the Rules and Guidelines, and/or the Director-adopted provisions, the provisions of this section shall govern and control.

3. Permit type. Table

identifies the type of permit required for each WCF and the approval authority.

TABLE 6.10.070.D

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

TYPE OF FACILITY	TYPE OF PERMIT	APPROVAL AUTHORITY
Small Wireless Facility (as defined in Section 6.10.010)	Small Wireless Facility Permit (SWFP) ¹	Public Works Director or designee ²
Eligible Facility (as defined in Section 6.10.010 and 6.10.075.B)	Eligible Facility Permit (EFP) ³	Public Works Director or designee ²
Maintenance and repairs, including minor modifications and emergency maintenance and repairs ⁴	Maintenance Encroachment Permit ⁵	Public Works Director or designee
Encroachment or excavation within or on public rights-of-way	Encroachment Permit, Excavation Permit and/or Building Permit ⁵	Public Works Director or designee

¹ For small wireless facility requests and permit procedures, see Section 6.10.070.D.4.

² Subject to public notice and review by the Director. See Section 6.10.070.F.

³ For eligible facility requests and procedures, see Section 6.10.075 of this chapter.

⁴ For definition of maintenance and repairs, and minor modifications, see Section 6.10.070.D.6.

⁵ For encroachment permits, see SBMC Sections 7.35.010.B.6 and 9.50.025; for excavation permits, see SBMC Chapter 9.15; and for building permits, see SBMC Chapter 9.60.

4. Small Wireless Facility Permit (SWFP). An SWFP, subject to the City's determination of compliance with the applicable requirements of this section and the Rules and Guidelines may be issued by the Director or his or her designee following public notice and review under any of the following circumstances:

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

(i) The proposal complies with all applicable provisions in this section without need for an exception pursuant to Section 6.10.070.J; and

(ii) The proposal is not located in any prohibited location identified in Section 6.10.070.G.4 or Section 6.10.070.J.5; or

b. The application is for a subsequent collocation to be located on an existing legally established small wireless communications collocation facility within the PROW provided that all of the following conditions are met:

(i) The existing collocation facility was approved after January 1, 2007 by discretionary permit; and

(ii) The existing collocation facility was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and

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

(iv) Provided, however, only those collocations that were specifically considered when the relevant environmental document was prepared are permitted uses;

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

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

c. The application shall meet the requirements of Section 6.10.070.E and the Rules and Guidelines. No public hearing shall be required. The Director shall review the application, pertinent information and documentation and public comments in accordance with Section 6.10.070.F. An application for a SWFP shall be approved if the Director makes all of the findings required by Section 6.10.070.I of this chapter. The Director's decision shall be issued in writing in accordance with the procedures set forth in Section 6.10.070.F and the Rules and Guidelines. The Director may impose additional conditions on the permit relating to time, place and manner pursuant to Section 6.10.070.H.

5. Maintenance Encroachment Permit. Minor modifications to an existing SWF, including replacement with the in-kind, number size or with smaller or less visible equipment, that (a) meet the standards set forth in this section, (b) will have little or no change in the visual appearance of the SWF, and (c) do not increase the RF output of the SWF, are considered to be routine maintenance and repairs, and may be approved by an encroachment permit and without any public notice or public hearing, subject to compliance with all other requirements of this chapter and the Rules and Guidelines. Maintenance and repairs include but are not limited to those minor modifications that result from an emergency. The upgrade or any other replacement of existing facilities and all new antennas, structures, and other facilities, including but not limited to those resulting from an emergency, shall comply with the SWFP or EFP requirements of this chapter and the Rules and Guidelines.

6. Power generators. An exception approved by the Director pursuant to Section 6.10.070.H shall be required for any application for installation of a new small wireless facility within the PROW that includes a power generator, or the replacement of, or collocations on or modifications to an existing small wireless facility within the PROW that includes a power generator.

7. Eligible facilities. Unless specifically exempt by federal or state law, any application for the installation or modification of a WCF that constitutes an "eligible facilities request" within the meaning of Section 6409(a) shall require the approval of an Eligible Facility Permit (EFP) by the Director in accordance with Section 6.10.075 of this chapter and the rules and guidelines prior to deployment of the eligible facility.

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

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

10. Speculative equipment or facilities prohibited. The City finds that the practice of "pre-approving" wireless communications equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The City shall not approve any equipment or other improvements in connection with a SWFP when the applicant does not actually and presently intend to install such equipment or construct such improvements.

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

E. Application Requirements. An application for a SWF shall be filed and reviewed in accordance with the following provisions and the Rules and Guidelines, except as otherwise provided for eligible facilities in Section 6.10.075 (Wireless Communications Facilities in the Public Rights-of-Way: Eligible Facilities).

1. Complete application required. The applicant shall submit a SWFP application in writing to the Public Works Department on a City-approved form as prescribed by the Director, and shall submit all information, materials and documentation required by this section and the Rules and Guidelines and as otherwise determined to be necessary by the Director to effectuate the purpose and intent of this section. The Director may waive certain submittal requirements or require additional information based on specific project factors. Unless an exemption or waiver applies, all applications shall include all of the forms, information, materials and documentation required by the City. An application shall not be deemed complete by the City unless the completed City application form and all required information, materials and documentation have been submitted to the City. An application which does not include all required forms, information, materials and documentation required by this section and the Rules and Guidelines, shall be deemed incomplete, and a notice of incomplete application shall be provided to the applicant in accordance with Section 6.10.070.E.6.

2. Application fees. Concurrent with submittal of the application, the applicant shall pay an application fee and processing fee, a deposit for an independent expert review as set forth in this section, and a deposit for review by the City Attorney's office, in a payment format accepted by the City Finance Department and in amounts set by resolution of the City Council. The amounts of such fees shall be fair and reasonable compensation for the applicant's use of the PROW, and shall be competitively neutral and nondiscriminatory. Fees shall not exceed any maximum fees set by federal or state law except to the extent that such fees are (a) a reasonable approximation of costs, (b) those costs themselves are reasonable, and (c) are non-

discriminatory. Failure to pay the fees in full at the time of application submittal shall result in the City deeming the application incomplete.

3. Voluntary Pre-submittal Conference. Prior to application submittal, the applicant may schedule and attend a voluntary pre-submittal conference with the Public Works Department and Community Development Department staff for all proposed SWFs in the PROW, including all new or replacement WCFs, and all proposed collocations or modifications to any existing WCF. The purpose of the pre-submittal conference is to provide informal feedback on the proposed classification, review procedure, location, design and application materials, to identify potential concerns and to streamline the formal application review process after submittal. Participation in a voluntary pre-submittal conference shall not commence the shot clock (timeline for review) requirements under Section 6.10.070.E.6 of this chapter.

4. Appointments. The Director may require that an application shall be submitted only at a pre-arranged appointment in accordance with the Rules and Guidelines. The Director has the discretion to set the frequency and number of appointments that will be granted each day. The requirement for an appointment shall be published on the Department's website.

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

6. Shot Clocks: Timeline for review and action. The timeline for review of and action on a SWFP application shall begin to run when the application is submitted in writing to the Department but may be reset or tolled by mutual agreement or upon the City's issuance of a notice of incomplete application to the applicant pursuant to Subsection E.7 of this Section. Applications shall be processed in conformance with the time periods and procedures established by applicable state and federal law, and FCC regulations and orders. The following provisions shall apply:

a. Small Wireless Facilities Request – For review of an application for a SWFP, the City shall act upon the application in accordance with the following timing requirements.

(i) 60 days -- For an application to collocate a Small Wireless Facility using an existing structure, the City will act upon the application within sixty (60) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual agreement or pursuant to Section 6.10.070.E.7.

(ii) 90 days -- For an application to deploy a Small Wireless Facility using a new structure, the City will act upon the application within ninety (90) days from the Department's receipt of the written application packet, unless the time period is re-set or tolled by mutual written agreement or pursuant to Section 6.10.070.E.7.

b. Eligible Facilities Request -- For an eligible facilities request, the City will act on the application within sixty (60) days of the Department's receipt of the written application packet, unless the time period is tolled by mutual written agreement or pursuant to Section 6.10.075.E.6 of this chapter.

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

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

(ii) 90 days: If a single application seeks authorization for multiple deployments of small wireless facilities, the components of which are a mix of deployments that fall within Section 6.10.070.E.6.a.i and deployments that fall within Section 6.10.070.E.6.a.ii, then the City shall act upon the application as a whole within 90 days, unless tolled or reset by mutual written agreement or pursuant to Section 6.10.070.E.7.

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

a. First Incomplete Notice -- Small Wireless Facility Resetting of Shot Clock. Department staff shall determine whether an application for a SWF is complete or incomplete within ten (10) days of the City's receipt of the initial application and shall notify the applicant in writing if the application is materially incomplete. The notice of incomplete application shall identify the specific missing information, materials and/or documents, and the ordinance, rule, statute or regulation creating the obligation to submit such information, materials and/or documents. The applicable shot clock date calculation set forth in Section 6.10.070.E.6.a.i or 6.10.070.E.6.a.ii shall re-start at zero on the date that the applicant submits all the information, materials and documents identified in the notice of incomplete application to render the application complete.

b. Subsequent Incomplete Notices. For resubmitted applications following the initial notice of incomplete application under Section 6.10.070.E.7.a, Department staff will notify the applicant within ten (10) days of the City's receipt of the resubmitted application whether the supplemental submission is complete or incomplete. If the supplemental submission was incomplete, the notice shall specifically identify the missing information, materials, and/or documents that must be submitted based on the Department's initial incomplete notice. In the case of any such subsequent notices of incomplete application, the applicable timeframe for review set forth in Section 6.10.070.E.6.a or Section 6.10.070.E.6.b shall be tolled from the day after the date the City issues the second or subsequent notice of incomplete application to the applicant until the applicant submits all the information, materials and documents identified by the City to render the application complete.

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

d. Determination of shot clock date.

(i) The shot clock date for a SWFP application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of days of the shot clock period identified pursuant to Section 6.10.070.E.6.a or 6.10.070.E.6.b. 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 date.

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

(iii) For purposes of this Subparagraph (e), the term "business day" means any day that is not a holiday, as defined in Subparagraph (iii).

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

9. Leases, Licenses and Agreements for City Infrastructure or Property in the PROW. The City and an applicant may mutually agree to enter into a lease, license or other agreement for the applicant's installation, modification or other deployment of a SWF on any City-owned infrastructure or other City property within the PROW. The proposed agreement may include multiple SWFs, as mutually agreed upon. The agreement shall be in addition to, and not a substitute, for any permit required by any provision of this code. An WCFP shall be required for all proposed facilities that are to be covered by an agreement between the City and the applicant. The agreement shall be fully executed by the City and applicant prior to the applicant's submittal of any SWFP application under this section 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 SWF within the PROW. The shot clock provisions set forth in Section 6.10.070.E shall not apply during any negotiations for any such lease, license or other agreement. The shot clock provisions set forth in Section 6.10.070.E shall commence upon the date of submittal of an application for a SWFP for specific small wireless facility(ies) following the effective date of the lease, license or other agreement.

F. Notice and Decision. Procedures for public notice, approval authority review of and action on WCFP applications are set forth in this subsection and in the Rules and Guidelines.

1. Public notice of application. Upon submittal of a complete SWFP application to the City, the applicant shall send the City-approved public notice of the application to all businesses and residents within a 150-foot radius of the proposed SWF in accordance with the Rules and Guidelines. Concurrently with service on the businesses and residents, the applicant shall also send a copy of the approved public notice to the Department along with proof of service of the public notice on all residents and businesses as required by this subsection.

2. Public comment. Within ten (10) days from service of the notice, any interested person may submit comments on the proposed SWF to the City by U.S. Mail or through the City's website. Any timely public comments received will be considered during the Director's review of the application.

3. Director decision on SWFP applications.

a. Director review, decision and notice. Upon receipt of a complete application for a SWFP pursuant to this section, the Director or his/her designee shall carry out administrative review of the application and all pertinent information, materials, documentation and public comments. The Director may approve, or conditionally approve an application for a SWFP only after the Director makes all of the findings required in Section 6.10.070.I. The Director may impose conditions in accordance with Section 6.10.070.H. Within five days after the Director approves or conditionally approves an application under this section, the Director shall issue a written determination letter, and shall serve a copy of the determination letter on the applicant at the address shown in the application and shall cause the determination letter to be published on the City's website. b. Conditional approvals. Subject to any applicable limitations in federal or state law, and in addition to the standard conditions of approval required by Section 6.10.070.H, nothing in this section is intended to limit the City's authority to conditionally approve an application for a SWFP to protect and promote the public health, safety and welfare in accordance with this section and the rules and guidelines.

c. Final decision. The Director's decision on an application for a SWFP shall be final and conclusive and not be appealable to the City Council.

G. Design, Aesthetic and Development Standards. In order to ensure compatibility with surrounding land uses, protect public safety and natural, cultural, and scenic resources, preserve and enhance the character of residential neighborhoods and promote attractive nonresidential areas, in addition to all other applicable requirements of this code, all SWFs in the PROW shall be located, developed, and operated in compliance with the following standards set forth in this subsection and in the Rules and Guidelines, unless the Director approves an exception subject to the findings required by Subsection J: Exceptions.

1. General requirements. All SWFs that are located within the PROW shall be designed and maintained as to minimize visual clutter, and reduce noise and other impacts on and conflicts with the surrounding community in accordance with the code and Rules and Guidelines.

2. Traffic safety. All SWFs shall be designed and located in such a manner as to avoid adverse impacts on traffic safety, and shall comply with the most recent edition of the

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

3. Space occupied. Each SWF shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

4. Location.

a. The preferred location for a SWF shall be on existing infrastructure such as utility poles or street lights. The infrastructure selected shall be located at alleys, streets and/or near property line prolongations. If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not technically feasible, in addition to all other application requirements of this section.

b. No SWF shall be located within six (6) feet of the living area of any residential dwelling unit. As used herein, the term "living area" means the interior habitable area of a dwelling unit including but not limited to bedrooms, windows, basements and attics but does not include a garage or any accessory structure. The 6-foot distance shall be measured from the dwelling unit's outer wall located nearest to the proposed SWF.

c. No SWF shall be located within the PROW or any poles, infrastructure, buildings or other structures of any kind in the PROW, in any of the following locations or sites:

(i) On the Seal Beach Pier, or any decorative lighting or poles on the Seal Beach Pier;

(ii) On any decorative lighting or poles on Main Street from and including Pacific Coast Highway to the Seal Beach Pier; or

(iii) On Electric Avenue between Marina to Ocean (including but not limited to within the parkway, greenbelt, bike path or any other PROW within Electric Avenue), except in the following locations:

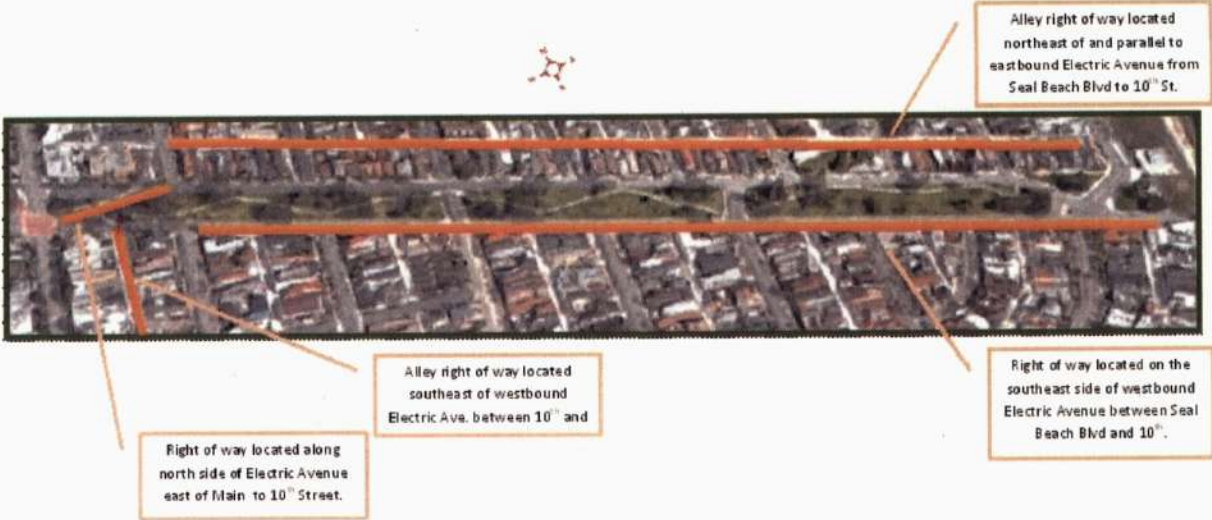
(aa) On the north side of the PROW adjacent to the westbound lanes of Electric Avenue; or

(bb) On the south side of the PROW adjacent to the eastbound lanes of Electric Avenue.

The permissible locations for SWFs on the PROW along Electric Avenue are shown on the Site Diagram contained in Table 6.10.070.G.4.c. as follows:

TABLE 6.10.070.G.4.c

Electric Avenue -- Permissible Locations for WCFs



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

d. Each component part of a SWF shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the PROW, or safety hazards to pedestrians and motorists, or interference with any path of travel or other disability access requirements imposed under federal or state law.

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

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

g. To conceal the non-antenna equipment, applicants shall install all non-antenna equipment (including but not limited to all cables) underground to the extent technically feasible. If such non-antenna equipment is proposed in within an underground utility district and the type of non-antenna equipment has been exempted by the City Council from undergrounding pursuant to Section 9.55.015.B.6 of Chapter 9.55 of the code, the non-antenna equipment shall comply with the requirements of this section if the Director finds that such undergrounding is technically feasible and undergrounding is required for building, traffic, emergency, disability access, or other safety requirements. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of wireless communications services.

5. Concealment or Stealth Elements. Stealth or concealment elements may include, but are not limited to:

- a. Radio frequency transparent screening;
- b. Approved, specific colors;

- c. Minimizing the size of the site;
- d. Integrating the installation into existing utility infrastructure;
- e. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site. The new infrastructure is then dedicated to the city and the installation is integrated into the new infrastructure; and
- f. Controlling the installation location pursuant to Subsection G.4 of this section.

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

a. All SWFs shall make available unused space for collocation of other WCFs, including space for these entities providing similar, competing services. Collocation is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a significant period of time. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Director may require the applicant to obtain a third-party technical study at applicant's expense. The Director may review any information submitted by applicant and permittee(s) in determining whether good faith has been exercised.

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

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

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

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

7. Radio frequency standards; noise.

a. SWFs shall comply with federal standards for radio frequency (RF) emissions and interference. No SWF or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters or operate in a manner that will degrade or interfere with existing

communications systems as stipulated by federal law. Failure to meet federal standards may result in termination or modification of the permit.

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

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

9. Modification. To the extent authorized by state and federal laws and regulations, at the time of modification of a SWF, 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.

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

1. Permit term. A SWFP shall be valid for a period of ten (10) years, unless it is revoked sooner in accordance with this section or pursuant to any other provision of federal or state law that authorizes the City to issue a SWFP with a shorter term, or such SWFP is extended pursuant to Section 6.10.070.R. At the end of the term, the SWFP shall automatically expire. Any other permits or approvals issued in connection with any collocation, modification or other change to the SWF, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend the ten-year term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

2. Strict compliance with approved plans. Any application filed by the permittee for a ministerial permit to construct or install the SWF approved by a SWFP must incorporate the SWFP approval, all conditions associated with the SWFP approval and the approved photo simulations into the project plans (the "approved plans"). The permittee must construct, install and operate the WCF in strict compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the SWF, must be submitted in a written request subject to the Director's prior review and approval.

3. Build-out period. The SWFP approval will automatically expire one year from the SWFP approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved SWF under this code, and any other permits or approvals required by any federal, state or other local public agencies with jurisdiction over the subject property, the eligible facility or its use. The Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least thirty (30) days prior to the automatic expiration date in this condition.

4. Maintenance obligations – vandalism. The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in the SWFP. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. Each year after the permittee installs the SWF, the permittee shall submit a written report to the Director, in a form acceptable to the Director, that documents the then-current site condition.

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

6. Compliance with laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Governing Laws") applicable to the permittee, the subject property, the SWF and any use or activities in connection with the use authorized in the WCFP, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Governing Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Seal Beach Municipal Code, any permit, any permit condition or any Governing Laws, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Code, any permit, any permit condition or any Governing Laws.

7. Adverse impacts on other properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. Impacts of radio frequency emissions on the environment, to the extent that such emissions are compliant with all Governing Laws, are not "adverse impacts" for the purposes of this condition. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction hours authorized by the Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm

to property or persons, or any work during an emergency declared by the City. The Director or the Director's designee may issue a stop work order for any activities that violate this condition.

8. Inspections – emergencies. The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs to the extent not inconsistent with City requirements.

9. Permittee's contact information. The permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the SWF, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.

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

11. Indemnification.

a. The permittee shall agree in writing to defend, indemnify, protect and hold harmless City, its elected and appointed officials, officers, boards, commissions, agents, consultants, employees, volunteers and independent contractors serving as City officials (collectively "Indemnitees"), from and against any and all claims, actions, or proceeding against the Indemnitees or any of them, to attack, set aside, void or annul, an approval of the Director or City Council concerning the permit and the construction, operation, maintenance and/or repair of the SWF. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, reasonable attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The permittee shall also agree not to sue or seek any money or damages from the City in connection with the grant of the permit and also agree to abide by the City's ordinances and other laws. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at the permittee's expense.

b. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the City and its elected and appointed officials, officers, boards, commissions,

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

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

a. The security shall be in effect until the SWF is fully and completely removed and the site reasonably returned to its original condition, to cover the removal costs of the WCF in the event that use of the SWF is abandoned or the approval is otherwise terminated.

b. The security shall be in a format and amount approved by the Director and City Attorney's office. The amount of security shall be as determined by the Director to be necessary to ensure proper completion of the applicant's removal obligations. In establishing the amount of the security, the Director shall take into consideration information provided by the applicant regarding the cost of removal. The amount of the security instrument shall be calculated by the applicant as part of its application in an amount rationally related to the obligations covered by the security instrument. The permittee shall be required to submit the approved security instrument to the Director prior to issuance of any SWFP for the proposed facility.

c. Security shall always be imposed if the SWF is located in a PROW adjacent to any residentially zoned property or residential uses.

13. Acceptance of conditions. The SWFP shall not become effective for any purpose unless/until a City "Acceptance of Conditions" form, in a form approved by the City Attorney's office, has been signed and notarized by the applicant/permittee before being returned to the Director within ten (10) days after the determination letter has been served on the applicant and published on the City's website in accordance with Section 6.10.070.G.3.a. The permit shall be void and of no force or effect unless such written agreement is received by the City within said ten-day period.

I. Findings on Small Wireless Facility Permit Applications. No permit shall be granted for a SWFP unless all of the following findings are made by the Director:

1. General Findings. The Director may approve or approve with conditions any SWFP required under this section only after making all of the following findings:

a. All notices required for the proposed deployment have been given by the applicant.

b. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter and use the PROW pursuant to state or federal

law, or the applicant has entered into a franchise or other agreement with the City permitting them to enter and use the PROW.

c. The applicant has demonstrated that the SWF complies with all applicable design, aesthetic and development standards and will not interfere with access to or the use of the PROW, existing subterranean infrastructure, or the City's plans for modification or use of such PROW location and infrastructure.

d. The applicant has demonstrated that the SWF will not cause any interference with emergency operations, as evidenced by competent evidence.

e. The proposed SWF's impacts have been mitigated through the use of stealth and concealment elements in accordance with the requirements of this section and the rules and guidelines.

f. The proposed SWF complies with all federal RF emissions standards and all other requirements of any federal and/or state agency.

g. The proposed SWF conforms with all applicable provisions of this section and federal and state law.

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

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

a. Would have more significant adverse effects on views or other environmental considerations;

b. Would impair the quality of service to the existing WCF; or

c. Would require existing WCFs at the same location to go off-line for a significant period of time.

J. Exceptions; Director Findings.

1. General requirements. An exception from the strict locational, physical, or design, or development requirements of Section 6.10.070.G, or as provided in the Rules and Guidelines, may be granted by the Director in his/her discretion, when it is shown to the Director's satisfaction, based on substantial evidence, any of the following:

a. Because of special, unique circumstances applicable to the proposed location and/or the proposed WCF, the strict application of the requirements of the section would deprive the applicant of privileges enjoyed by other permittees in the vicinity operating a similar WCF; or b. Denial of the SWF as proposed would violate federal law, state law, or both; or

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

2. Application requirements. An applicant may only request an exception at the time of applying for a SWFP. The request must include both the specific provision(s) of this section from which the exception is sought and the basis of the request. Any request for an exception after the City has deemed an application complete shall be treated as a new application.

3. Burden. The applicant shall have the burden of establishing the basis for any requested exception.

4. Scope; Conditions. The Director shall limit its exception to the extent to which the applicant demonstrates such an exception is necessary to reasonably achieve its reasonable technical service objectives. In addition to the standard conditions of approval pursuant to Section 6.10.070.H, the Director may adopt other conditions of approval as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other wireless providers seeking to locate any WCF in the area where such property is situated and that are reasonably necessary to promote the purposes in this section and protect the public health, safety and welfare.

5 Prohibited locations; no exception. Notwithstanding any other provision of this section, SWFs are prohibited in any of the following locations, and no exception shall be granted by the Director:

a. Any location or site within a PROW for which approval cannot be obtained from the NWS.

b. Any location or site within a PROW for which approval cannot be obtained by any other federal or state agency with jurisdiction over the proposed SWF.

K. Reserved.

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

M. Business License. A SWFP issued pursuant to this section shall not be a substitute for any business license otherwise required under this code.

N. Temporary Small Wireless Facilities

1. Emergency deployment. In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that the Director deems to constitute an emergency, the Director may approve the installation and operation of a temporary small wireless facility, subject to such reasonable conditions that the Director deems necessary.

2. Exclusions; removal. A temporary small wireless facility shall not be permitted for maintenance activities or while awaiting an expected entitlement or pending plan review, and the allowance of a temporary small wireless facility during an emergency shall not be considered to establish a permanent use of such a facility after the emergency has ended, as

declared by the City Manager or other appropriate federal, state, or local official. Any temporary small wireless facilities placed pursuant to this Subsection N must be removed within five days after the date the emergency is lifted. Any person or entity that places temporary small wireless facilities pursuant to this Subsection N must send a written notice that identifies the site location and person responsible for its operation to the Director as soon as reasonably practicable.

O. Operation and Maintenance Standards. All SWFs must comply at all times with the following operation and maintenance standards and other standards set forth in the rules and guidelines adopted by resolution of the City Council.

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

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

3. Each SWF shall be operated and maintained in compliance with all local, federal and state laws and regulations.

P. Radio Frequency (RF) Emissions and Other Monitoring Requirements.

1. The permittee, owner and operator of a SWF shall submit within ninety days of beginning operations under a new or amended permit, and every five years from the date the SWF began operations, a technically sufficient report ("monitoring report") that demonstrates all of the following:

a. The SWF is in compliance with all applicable federal regulations, including the FCC's RF emissions standards as certified by a qualified radio frequency emissions engineer; and

b. The SWF is in compliance with all provisions of this section and the City's conditions of approval.

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

R. Permit Extension.

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

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

3. Director decision. If a SWFP has not expired at the time a timely application is made for an extension, the Director may administratively extend the term of the SWFP for subsequent ten-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, all provisions set forth in Subsection R.2. above, and any other applicable provisions of this code that are in effect at the time the permit extension is granted. The Director's decision shall be issued in the form of a written determination letter in accordance with Section 6.10.070.F.3. The Director's decision on an application for a SWFP shall be final and conclusive and not be appealable to the City Council.

S. Cessation of Use or Abandonment.

1. A SWF or wireless communications collocation facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless communications services for ninety (90) or more consecutive days. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

2. The operator of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including an unpermitted site) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the SWF shall provide written notice to the Director of any discontinuation of operations of 30 days or more.

3. Failure to inform the Director of cessation or discontinuation of operations of any existing SWF as required by this Subsection shall constitute a violation of any approvals and be grounds for enforcement pursuant to Subsection T.

T. Revocation or Modification; Removal.

1. Revocation or modification of SWFP. The Director may modify or revoke any SWFP if the operation or maintenance of the SWF violates any of the permit's terms or conditions, this section or any other ordinance or law in accordance with the following procedures.

a. When the Director has reason to believe that grounds exist for the modification or revocation of a SWF, he/she shall give written notice by certified mail thereof to

the permittee setting forth a statement of the facts and grounds. The permittee shall have not less than ten (10) days to submit a written response and supporting documentation to the Director prior to the Director's decision. The Director's decision shall be issued in writing, and shall be posted on the City's website in accordance with the procedures set out in Section 6.10.070.F.3.a.

b. The Director may revoke or modify the SWFP if he/she makes any of the following findings:

(i) The SWFP has expired as provided for in Subsection R: Permit Expiration.

(ii) The SWF has been abandoned as provided in Subsection S: Cessation of Use or Abandonment.

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

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

c. If the Director determines that modification of the SWFP is warranted, he/she may impose any revised or new conditions that he/she deems appropriate based on his/her other findings.

d. Decisions of the Director to modify or revoke a SWF shall be subject to the administrative review procedure of Chapter 1.20 of this code. The City Manager shall be the hearing officer for purposes of such procedure and may not delegate such responsibility. The City Manager's administrative review decision shall be final and shall not be subject to City Council review pursuant to Chapter 1.20 of this code.

2. Permittee's removal obligation. Upon the expiration date of the SWFP, including any extensions, earlier termination or revocation of the SWFP or abandonment of the SWF, the SWFP shall become null and void, and the permittee, owner or operator shall completely remove its SWF or wireless communications collocation facility. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The SWF or wireless communications collocation facility shall be removed from the property within 30 days, at no cost or expense to the City. If the SWF or wireless communications collocation facility is located on another SWF or other private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

3. Failure to remove. Failure of the permittee, owner, or operator to promptly remove its SWF wireless communications collocation facility and restore the property within 30 days after expiration, earlier termination, or revocation of the SWFP, or abandonment of the SWF or wireless communications collocation facility, shall be a violation of this code, and be grounds for:

a. Prosecution;

b. Calling of any bond or other assurance required by this section or conditions of approval of permit;

c. Removal of the SWF or wireless communications collocation facility by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or

d. Any other remedies permitted under this code.

4. Summary removal. In the event the Director determines that the condition or placement of a SWF or wireless communications collocation facility located in the PROW constitutes a dangerous condition, obstruction of the PROW, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the Director may cause the SWF or wireless communications collocation 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 SWF or wireless communications collocation facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the SWF or wireless communications collocation facility shall be treated as abandoned property.

5. Removal of facilities by City. In the event the City removes a SWF or wireless communications collocation 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 WCF or wireless communications collocation 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 SWF or wireless communications collocation facility. Neither the permittee nor the owner nor operator shall have any claim if the City destroys any such SWF or wireless communications collocation facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due to exigent circumstances.

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

U. Deemed Granted. In the event that a SWFP application is deemed granted by rule of federal or state law, all conditions, development and design standards, and operations and maintenance requirements imposed by this section and any rules and guidelines are still applicable and required for the installation.

V. Effect on Other Ordinances; Conflicting Code Provisions Superseded.

1. Compliance with the provisions of this section shall not relieve a person from complying with any other applicable provision of this code.

2. The provisions of this section shall govern and supersede any conflicting provisions of the code with respect to the permitting and regulation of wireless communications facilities in the public right-of-way.

W. State or Federal Law.

1. In the event it is determined by the City Attorney that state or federal law prohibits discretionary permitting requirements for certain SWFs, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the City Attorney shall be in writing with citations to legal authority and shall be a public record. For those WCFs, in lieu of a SWFP, a ministerial wireless facilities permit shall be required prior to installation or modification of a SWF, and all provisions of this section shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary permit. Any conditions of approval set forth in this section or the rules and guidelines, or deemed necessary by the Director, shall be imposed and administered as reasonable time, place and manner rules.

2. If subsequent to the issuance of the City Attorney's written determination pursuant to Subsection 6.10.070.W.1, 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.

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

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

X. Nonconforming Small Wireless Communications Facilities.

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

2. Legal nonconforming SWFs shall comply at all times with the City, state and federal laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal

nonconforming facility which fails to comply with applicable laws, ordinances, regulations or the conditions of approval may be required to conform to the provisions of this section.

3. Modifications to legal nonconforming SWFs may be permitted under the following circumstances.

a. Ordinary maintenance may be performed on a legal nonconforming facility.

b. Modifications may be made to an eligible facility, to the extent expressly required by Section 6409(a).

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

EXHIBIT "B"

CITY OF SEAL BEACH ORDINANCE 1677

**NEW SECTION 6.10.075 WIRELESS COMMUNICATIONS FACILITIES IN
THE PUBLIC RIGHTS-OF-WAY -- ELIGIBLE FACILITIES REQUESTS**

"6.10.075 Wireless Communications Facilities in the Public Rights-of-Way -- Eligible Facilities Requests.

A. Purpose and Intent.

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

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

3. This Section establishes reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and California State law, for wireless facilities collocations and modifications pursuant to Section 6409(a), and related FCC regulations codified in 47 C.F.R. Section 1.6100 et seq. or any successor regulation. This section is not intended to, nor shall it be interpreted or applied to:

a. Prohibit or effectively prohibit any wireless service provider's ability to provide wireless communications services;

b. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate wireless communications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;

c. Unreasonably discriminate among providers of functionally equivalent services;

d. Deny any request for authorization to place, construct or modify WCFs on the basis of environmental effects of radio frequency emissions to the extent that such WCFs comply with the FCC's regulations concerning such emissions;

e. Prohibit any collocation or modification that the City may not deny under federal or California State law; or

f. Otherwise authorize the City to preempt any applicable federal or state law.

4. Due to rapidly changing technology and regulatory requirements, and to further implement this section, the City Council may adopt written policies, rules, regulations and guidelines by resolution to further implement and administer this section, which may include but are not limited to, provisions addressing applications and the application review process, notices, location, development and design standards, conditions, and operations and maintenance requirements for eligible facilities. The Director may adopt policies, procedures and forms consistent with this section and any Council-adopted Rules and Guidelines, which such Director-adopted provisions shall be posted on the City's website and maintained at the Department for review, inspection and copying by applicants and other interested members of the public. The City Council and the Director may update their rules, policies, procedures and forms in their discretion to adjust for new technologies, federal and/or state regulations, and/or to improve and adjust the City's implementing regulatory procedures and requirements, and compliance therewith is a condition of approval in every eligible facility permit.

B. Definitions. For the purposes of this section, the following words and phrases have the meanings set forth below. Words and phrases not specifically defined in this section will be given their meaning ascribed to them in Section 6.10.070 of this chapter or as otherwise provided in Section 6409(a), the Communications Act or any applicable federal or state law or regulation.

Application: a written submission to the City for the installation, construction or other deployment of an eligible facility and other related ministerial permits to obtain final approval of the deployment of an eligible facility at a specified location.

Base station: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(1), or any successor regulation, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Section 1.6100(b)(9), or any successor regulation, or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under 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), or any successor regulation, and (ii) that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment described in 47 C.F.R. Sections 1.6100(b)(1)(i) and (ii), or any successor regulation.

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

Day: a calendar day, except as otherwise provided in this section.

Eligible Facility Permit (EFP): a permit for an eligible facilities request under Section 6409(a) that meets the criteria set forth in this section.

Eligible facilities request: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(3), or any successor regulation, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.

Eligible support structure: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(4), or any successor regulation, which defines that term as any tower or base station as defined in 47 C.F.R. Section 1.6100(b)(1) or (9), or any successor regulation; provided, that it is existing at the time the relevant application is filed with the state or local government under this definition.

Existing: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(4), or any successor regulation, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Rules and Guidelines: The rules, guidelines, regulations and procedures adopted from time to time by resolution of the City Council to administer and implement this section.

Site: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(6), or any successor regulation, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Substantial change: 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 (in or outside the PROW). For clarity, this definition organizes the FCC's criteria and thresholds for determining if a collocation or modification substantially changes the physical dimensions of a wireless tower or base station based on the type and location.

1. For towers outside the PROW, a substantial change occurs when:
 - a. The proposed collocation or 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 collocation or modification adds 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 collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, but not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
2. For towers in the PROW and for all base stations, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height of the tower more than 10% or 10 feet (whichever is greater); or
 - b. The proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the tower or base station by more than six feet; or
 - c. The proposed collocation or 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
 - d. The proposed collocation or modification 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; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. In addition, for all towers and base stations wherever located, a substantial change occurs when:

a. The proposed collocation or 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 collocation or modification violates a prior condition of approval; provided, however, that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this Section.

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

Tower: the same as defined by the FCC in 47 C.F.R. Section 1.6100(b)(9), or any successor regulation, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles, monotrees and lattice towers.

Transmission equipment: 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.

C. **Applicability.** This section applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409(a). Even if the proposed project would otherwise require a SWFP under Section 6.10.070 of this chapter, and/or a ministerial permit, eligible facility requests submitted for approval pursuant to Section 6409(a) must be first reviewed under this section. If the approval authority finds that the project qualifies for approval under Section 6409(a), then no SWFP will be required. However, the applicant may voluntarily elect to seek a SWFP under Section 6.10.070 either in lieu of an EFP approval or after the approval authority finds that an application does not qualify for an EFP approval pursuant to Section 6409(a).

D. **Approvals Required.**

1. **Eligible Facility Permit (EFP) approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station shall require approval of an EFP subject to the Director's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this section and the rules and guidelines.

2. Other permits and regulatory approvals. No collocation or modification approved pursuant to this section may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which include without limitation any ministerial permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any EFP approval granted under this section shall remain subject to any and all lawful conditions and/or legal requirements associated with any other permits or regulatory approvals for the existing wireless tower or base station.

E. Application Requirements. An application for a EFP shall be filed and reviewed in accordance with the following provisions and the rules and guidelines.

1. Complete application required. The applicant shall submit an EFP application in writing to the Public Works Department on a City-approved form as prescribed by the Director, and shall contain all required notices, information, materials and documentation required by this section and the Rules and Guidelines, or as otherwise determined to be necessary by the Director to effectuate the purpose and intent of this section. The Director may waive certain submittal requirements or require additional information based on specific project factors. Unless an exemption or waiver applies, all applications shall include the completed form and all information, materials, and documentation required by the City. An application which does not include all of the required forms, information, materials and documentation shall be deemed incomplete, and a notice of incomplete application shall be provided to the applicant in accordance with Subsection E.6. of this section.

a. Public notice. In addition to all other requirements of this section and the rules and guidelines, the application shall include a notice that complies with the City-approved text and format, and contains all of the following information:

- (i) A general explanation of the proposed collocation or modification;
- (ii) The applicant's identification and contact information as provided on the application submitted to the City;
- (iii) Contact information for the approval authority; and
- (iv) A statement substantially similar to the following: "Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application within sixty (60) days from the filing date, or the City and applicant reach a mutual tolling agreement."

2. Application fees. Concurrent with submittal of the application, the applicant shall pay an application fee and processing fee, a deposit for an independent expert review as set forth in this section, and a deposit for review by the City Attorney's office, in a payment format accepted by the City Finance Department and in amounts set by resolution of the City Council. Failure to pay the fees in full at the time of application submittal shall result in the City deeming the application incomplete. Fees shall be set by resolution of the City Council, and shall be determined in accordance with Section 6.10.070.E.3 of this chapter.

3. Voluntary pre-submittal conference. Prior to application submittal, the applicant may schedule and attend a voluntary pre-submittal conference with the Public Works Department and Community Development Department staff for all proposed eligible facilities in

the PROW. The purpose of the voluntary pre-submittal conference is to provide informal feedback on the proposed classification of the facility as an eligible facility under Section 6409(a), review procedure, location, design and application materials, to identify potential concerns and to streamline the formal application review process after submittal. Participation in a voluntary pre-submittal conference shall not trigger the shot clocks specified in Section 6.10.075.E.6.

4. Appointments. The Director may require that an application shall be submitted only at a pre-arranged appointment in accordance with the Rules and Guidelines. The Director has the discretion to set the frequency and number of appointments that will be granted each day. The requirement for an appointment shall be published on the Department's website.

5. Independent expert. The Director is authorized to retain on behalf of the City an independent, qualified consultant to review any application for an EFP to review the technical aspects of the application, including but not limited to: the accuracy, adequacy, and completeness of submissions; compliance with applicable radio frequency emission standards; whether any requested exception is necessary, technical demonstration of the facility designs or configurations; technical feasibility; coverage analysis; the validity of conclusions reached or claims made by applicant or other factors as deemed appropriate by the Director to determine whether the proposed facility qualifies as an eligible facility under Section 6409(a). The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

6. Shot Clock; timeline for review and action. The timeline for review of and action on an EFP application shall begin to run when the application is submitted in writing to the Department but may be tolled by mutual agreement or upon the City's issuance of a notice of incomplete application to the applicant pursuant to Subsection E.7 of this Section. Applications shall be processed in conformance with the time periods and procedures established by applicable state and federal law, and FCC regulations and orders. The following provisions shall apply:

a. 60 days – Within sixty (60) days of the date on which an applicant submits a written request seeking approval of an eligible facilities request under this section, the City will approve the application unless the City determines that the application is not covered by this section or the 60-day deadline is tolled pursuant to mutual agreement or Subsection (b).

b. Tolling of Shot Clock. The 60-day timeframe for review of a proposed eligible facility shall begin to run when the application for the EFP is submitted in writing to the Department but may be tolled by mutual agreement or upon the City's issuance of a notice of incomplete application to the applicant pursuant to this Subsection.

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

(ii) Subsequent Incomplete Notices. Within ten (10) days of each supplemental submission, the City shall deem the application complete or incomplete. If the

supplemental submission is incomplete, the notice shall clearly and specifically delineate all missing information and documents from the supplemental submission based on the information or documents identified in the first notice delineating missing information or documentation. The 10-day timeframe is tolled in the case of second or subsequent notices pursuant to this procedure. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

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

F. Notice and Decision. Procedures for public notice, approval authority review of and action on EFP applications are set forth in this subsection and in the Rules and Guidelines.

1. Public notice of application. Upon submittal of a complete EFP application to the City, the applicant shall send the City-approved public notice of the application to all businesses and residents within a 150-foot radius of the proposed eligible facility in accordance with the rules and guidelines. Concurrently with service on the businesses and residents, the applicant shall also send a copy of the approved public notice to the Department along with proof of service of the public notice on all residents and businesses as required by this subsection.

2. Public comment. Within ten (10) days from service of the notice, any interested person may submit comments on the proposed eligible facility to the City by U.S. Mail or through the City's website. Any timely public comments received will be considered during the Director's review of the application.

3. Director decision on EFP applications.

a. Director review, decision and notice. Upon receipt of a complete application for EFP pursuant to this section, the Director shall undertake administrative review of the application and all pertinent information, materials, documentation and public comments. The Director may approve, or conditionally approve an application for an EFP if the Director makes all of the findings required in Section 6.10.075.F.4. The Director may impose conditions in accordance with Section 6.10.075.F.6. Within five days after the Director approves or conditionally approves an application under this section, or expiration of the shot clock period set forth in Section 6.10.075.E.6, whichever occurs sooner, the Director shall issue a written determination letter, and shall serve a copy of the determination letter on the applicant at the address shown in the application and shall cause the determination letter to be published on the City's website.

4. Required findings for EFP approval. The Director shall approve or conditionally approve an application for an EFP pursuant to Section 6409(a) and this section if the Director makes all of the following findings:

a. The applicant has provided all forms, information, materials, and documentation for the proposed project required by this section;

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

c. The proposed project does not constitute a substantial change to the physical dimensions of the existing wireless tower or base station, as defined in Section 6.10.075.B; and

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

5. Criteria for denial without prejudice. Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice an application for approval of an EFP when the Director finds that the proposed project:

a. Does not satisfy the findings for approval as an eligible facility under Subsection E.3 of this Section;

b. Involves the replacement of the entire support structure;

c. Violates any legally enforceable standard or permit condition related to compliance with generally applicable disability access, building, structural, electrical and/or safety codes;

d. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or

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

6. Conditional approvals. Subject to any applicable limitations in federal or state law, and in addition to the standard conditions of approval required by Section 6.10.075.F.6, nothing in this section is intended to limit the City's authority to conditionally approve an application for an EFP under Section 6409(a) to protect and promote the public health, safety and welfare in accordance with this section and the Rules and Guidelines, including but not limited to, building code standards and health and safety conditions, and such other reasonable time, place and manner conditions authorized under applicable federal and state laws and regulations. The standard conditions set forth in of Section 6.10.075.G shall apply to all eligible facilities.

7. Written decision. The Director's decision shall be issued in writing in accordance with the procedures set forth in Section 6.10.075.F.3.a. and the Rules and Guidelines. The Director's decision on an application for an EFP shall be final and conclusive and shall not be appealable to the City Council.

8. Deemed Approved.

a. If the City fails to act on an EFP application within the 60-day review period referenced in Section 6.10.075.E.6.a. (subject to any tolling pursuant to written agreement or Section 6.10.075.E.6.b.), the applicant may provide the City written notice that the time period for acting has lapsed.

b. The applicant shall provide written notice to the City at least seven days prior to beginning construction or collocation pursuant to an EFP issued pursuant to a deemed approved application.

c. An EFP deemed approved pursuant to Section 6409(a) shall comply with all applicable building code standards and traffic, health and safety requirements of the code deemed applicable by the Director.

d. 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 E.9 or any other provision of this code.

G. Standard Conditions of approval applicable to all applications. All EFP approvals, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Subsection, in addition to any conditions imposed pursuant to Section 6.10.075.F and the rules and guidelines. The Director (or the City Council on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved eligible facility consistent with the goals of this section.

1. Permit term. The City's grant or grant by operation of law of an EFP constitutes a federally-mandated modification to the underlying permit, approval or other prior regulatory authorization for the subject tower or base station pursuant to Section 6409(a), for ten years, subject to the following provisions. The City's grant or grant by operation of law of an EFP will not extend the term, if any, for any ministerial permit or other underlying prior regulatory permit, approval or other authorization. Accordingly, the term for an EFP approval shall be coterminous with the ministerial permit and other underlying permit, approval or other prior regulatory authorization for the subject tower or base station. This condition shall not be applied or interpreted in any way that would cause the term of the underlying permit for the modified facility to be less than ten years in total length, unless such underlying permit is abandoned or revoked pursuant to this code or any other provision of federal or state law.

2. Accelerated approval terms due to invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any eligible facilities request pursuant to Section 6409(a), such EFP approval shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of any previously approved EFP or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove any equipment, components, structures and improvements approved under the invalidated EFP approval when it has submitted an application for either a SWFP under Section 6.10.070 for those WCFs before the one-year period ends. If the SWFP is denied, the permittee shall remove all its equipment, components, structures and improvements before the one-year period ends.

3. No waiver of standing. The approval of an EFP (either by express approval or by operation of law) does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) and/or any eligible facilities approval pursuant to Section 6409(a) (whether by the approval authority or by operation of law).

4. Strict compliance with approved plans. Any application filed by the permittee for a ministerial permit to construct or install the eligible facility approved by an EFP must incorporate the EFP approval, all conditions associated with the EFP approval and the approved photo simulations into the project plans (the "approved plans"). The permittee must construct, install and operate the eligible facility in strict compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the eligible facility, must be submitted in a written request subject to the Director's prior review and approval, who may revoke the EFP approval if the Director finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by Section 6409(a) or the FCC in 47 C.F.R. Section 1.6100(b)(7), as may be re-numbered or amended.

5. Build-out period. The EFP approval will automatically expire one year from the EFP approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved eligible facility, which include without limitation any City ministerial permit, and any other permits or approvals required by any federal, state or other local public agencies with jurisdiction over the subject property, the eligible facility or its use. The Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least thirty (30) days prior to the automatic expiration date in this condition.

6. Maintenance obligations – vandalism. The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved plans and all conditions in the EFP approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. Each year after the permittee installs the wireless facility, the permittee shall submit a written report to the director, in a form acceptable to the director, that documents the then-current site condition.

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

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

acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Code, any permit, any permit condition or any Governing Laws, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Code, any permit, any permit condition or any Governing Laws.

9. Adverse impacts on other properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. Impacts of radio frequency emissions on the environment, to the extent that such emissions are compliant with all Governing Laws, are not "adverse impacts" for the purposes of this condition. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction hours authorized by the Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city. The director or the director's designee may issue a stop work order for any activities that violate this condition.

10. Inspections – emergencies. The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.

11. Permittee's contact information. The permittee shall furnish the Department with accurate and up-to-date contact information for a person responsible for the eligible facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.

12. Indemnification.

a. The permittee, and if applicable, the property owner of the property upon which the eligible facility is installed in the PROW, shall agree in writing to defend, indemnify, protect and hold harmless City, its elected and appointed officials, officers, boards, commissions, agents, consultants, employees, volunteers and independent contractors serving as City officials (collectively "Indemnitees"), from and against any and all claims, actions, or proceeding against the Indemnitees or any of them, to attack, set aside, void or annul, an approval of the Director or City Council concerning the EFP and the construction, operation, maintenance and/or repair of the eligible facility. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, reasonable attorneys' fees and expert witness fees, or liability of any kind related to

or arising from such claim, action, or proceeding. The permittee, and if applicable, the property owner of the property upon which the eligible facility is installed in the PROW, shall also agree not to sue or seek any money or damages from the City in connection with the grant of the permit and also agree to abide by the City's ordinances and other laws. The City shall promptly notify the permittee and property owner (if any) of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at the permittee's expense.

b. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the City and its elected and appointed officials, officers, boards, commissions, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the City for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the EFP, or to any work done by or use of the PROW by the permittee, owner or operator of the EFP, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the City and its elected and appointed officials, officers, boards, commissions, agents, consultants, employees and volunteers and independent contractors serving as City officials.

13. Performance Security. Prior to issuance of any ministerial permit, the permittee shall pay for and provide a performance bond or other form of security that complies with the following minimum requirements and the Rules and Guidelines.

a. The security shall be in effect until the eligible facility is fully and completely removed and the site reasonably returned to its original condition, to cover the removal costs of the eligible facility in the event that its use is abandoned or the approval is otherwise terminated.

b. The security shall be in a format and amount approved by the Director and City Attorney's office. The amount of security shall be as determined by the Director to be necessary to ensure proper completion of the removal of the eligible facility. In establishing the amount of the security, the Director shall take into consideration information provided by the applicant regarding the cost of removal. The amount of the security instrument shall be calculated by the applicant as part of its application in an amount rationally related to the obligations covered by the security instrument. The permittee shall be required to submit the approved security instrument to the Director prior to issuance of any ministerial for the proposed eligible facility.

c. Security shall always be imposed if the eligible facility is located in a PROW adjacent to any residentially zoned property or residential uses.

14. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the eligible facility approved by the permit is removed in its entirety from the PROW, an insurance policy or policies of public liability insurance which shall be in the form and substance satisfactory to the City in accordance with the Rules and Guidelines, and shall be maintained until the term of the permit ended and the eligible facility is removed from the PROW. The insurance shall comply with the minimum limits and coverages and provisions set

forth in the Rules and Guidelines, and as otherwise established from time to time by the City, and which fully protect the City from claims and suits for bodily injury, death, and property damage.

15. Acceptance of conditions. The EFP shall not become effective for any purpose unless/until a City "Acceptance of Conditions" form, in a form approved by the City Attorney's office, has been signed and notarized by the applicant/permittee before being returned to the Director; within ten (10) days after the determination letter has been served on the applicant and published on the City's website in accordance with Section 6.10.070.G.3.a. The permit shall be void and of no force or effect unless such written agreement is received by the City within said ten-day period.

H. Operation and Maintenance Standards. The permittee shall comply with all operations and maintenance standards set forth in Section 6.10.070.0 of this chapter and the Rules and Guidelines.

I. Additional Requirements. All eligible facilities (including eligible facilities granted by the City and eligible facilities requests granted by operation of law) shall comply with and be subject to all of the following provisions of Section 6.10.070 of this chapter.

1. Section 6.10.070.G(b), (c) and (d) (locational restrictions).
2. Section 6.10.070.J: Exceptions; Director's Findings.
3. Section 6.10.070.L: Nonexclusive Grant.
4. Section 6.10.070.M: Business License
5. Section 6.10.070.P: Radio Frequency (RF) Emissions and Other Monitoring Requirements
6. Section 6.10.070.Q: No Dangerous Condition or Obstructions Allowed.
7. Section 6.10.070.R: Permit Extension.
8. Section 6.10.070.S: Cessation of Use or Abandonment.
9. Section 6.10.070.T: Revocation or Modification; Removal.
10. Section 6.10.070.V: Effect on Other Ordinances.
11. Section 6.10.070.W: State or Federal Law.
12. Section 6.10.070.X: Nonconforming Wireless Communications Facilities.

J. Effect on Other Ordinances; Conflicting Code Provisions Superseded.

1. Compliance with the provisions of this section shall not relieve a person from complying with any other applicable provision of this code.

2. The provisions of this section shall govern and supersede any conflicting provisions of the code with respect to the permitting and regulation of eligible facilities in the public right-of-way.

