

CITY OF PLEASANTON	POLICY NO. [RESERVED]
Adopted: April 21, 2026	
GENERAL SUBJECT: COLLOCATIONS AND MODIFICATIONS TO EXISTING WIRELESS FACILITIES SUBMITTED AS ELIGIBLE FACILITIES REQUESTS	

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Section 1. INTRODUCTION AND BACKGROUND

On February 22, 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act. This statute generally requires that state and local governments “may not deny, and shall approve” certain additions and modifications to existing wireless facilities that do not substantially change existing facility’s physical dimensions.¹ Applications covered by this statute are deemed “eligible facilities requests.”²

On October 21, 2014, the Federal Communications Commission adopted detailed regulations to interpret and implement Section 6409.³ The FCC regulations define statutory terms, prohibit certain application requirements, limit application review periods and deem applications automatically granted when the state or local government fails to act within the applicable timeframe. In 2015, the United States Court of Appeals for the Fourth Circuit upheld the FCC’s regulations against a legal challenge by local governments.⁴

On June 10, 2020, the FCC adopted additional regulations purporting to clarify its rules to interpret and implement Section 6409.⁵ These additional regulations specified what steps an applicant must take for the shot clock to commence, modified what constitutes a substantial change to a wireless facility and clarified the circumstances under which an environmental assessment is not required. On November 3, 2020, the FCC adopted further regulations that defined wireless facility site boundaries and allowed certain additional excavation and deployment of transmission equipment beyond existing site boundaries.⁶

In 2024, the United States Court of Appeals for the Ninth Circuit overturned the FCC’s interpretation of the term “conceal” and limited the FCC’s attempt to restrict enforcement of pre-existing permitting conditions, but otherwise upheld the FCC’s interpretations that required express evidence to enforce a pre-existing permitting conditions within the Section 6409 process, gave localities less discretion as to when the Section 6409 shot clock begins, imposed no total cumulative limit on the number of additional cabinets attached to poles, and permitted greater height increases than FCC rules previously allowed.⁷

¹ See 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. § 1455(a).

² 47 U.S.C. § 1455(a)(2).

³ See *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, Report and Order, 30 FCC Rcd. 31 (Oct. 21, 2014); 47 C.F.R. §§ 1.6100 *et seq.*

⁴ See *Montgomery Cty. v. FCC*, 811 F.3d 121 (4th Cir. 2015).

⁵ See *In re Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd. 5977 (Jun. 10, 2020).

⁶ See *In re Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849 (Nov. 3, 2020); 47 C.F.R. §§ 1.6100 *et seq.*

⁷ *League of California Cities v. FCC*, 118 F.4th 995 (9th Cir. 2024).

On April 21, 2026, and pursuant to Section 18.110.050 of the Municipal Code, the City Council adopted this policy to conform the City's permit process for eligible facilities requests to federal standards in Section 6409 and the FCC's regulations.

Section 2. PURPOSE AND INTENT

- (a) The City intends this policy to establish reasonable, uniform and comprehensive standards and procedures for eligible facilities requests proposed within the City's territorial and jurisdictional boundaries, consistent with and to the extent permitted under federal and California state law.
- (b) The standards and procedures contained in this policy are intended to, and should be applied, consistent with federal and state law, to protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community.
- (c) This policy is also intended to reflect and promote the community interest by: (1) ensuring that an appropriate balance between public and private interests are maintained; (2) protecting the City's visual character and property values from potential adverse impacts or visual blight created or exacerbated by wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting the City's residential neighborhoods and other family-oriented environments; and (5) ensuring appropriate placement of high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (d) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; or (6) otherwise authorize the City to violate any applicable federal or California state law.

Section 3. DEFINITIONS

The abbreviation, phrases, terms and words used in this policy will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms

or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings.

The definitions in this policy shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Municipal Code. However, if any definition assigned to any phrase, term or word in this chapter conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control. All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) **“appellate authority”** means the City official or appointed/elected body responsible for review of approval authority decisions and vested with authority to consider and decide appeals. For appeals from the approval authority, the appellate authority shall be the City Manager or their designee.
- (b) **“approval authority”** means the City official or appointed/elected body responsible for application review and vested with the authority to approve, conditionally approve or deny such applications as provided in this policy. The approval authority for applications in connection with eligible facilities requests shall be the Director or their designee.
- (c) **“base station”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), which defines that term as follows:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower.

(i) 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.

(ii) 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).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 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.

(iv) 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. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

Note: As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- (d) **"City"** means the City of Pleasanton, California.
- (e) **"City Council"** means the City Council of the City of Pleasanton, California.
- (f) **"City Manager"** means the City Manager of the City of Pleasanton, California or the City Manager's designee.
- (g) **"collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." 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.
- (h) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (i) **"Department"** means the City of Pleasanton Community and Economic Development Department.
- (j) **"Director"** means the City of Pleasanton Community and Economic Development Department Director or the Community and Economic Development Department Director's designee.
- (k) **"EFR Approval"** means the permit approval required by the City of Pleasanton Community and Economic Development Department in connection with an eligible facilities request subject to this policy.
- (l) **"eligible facilities request"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), which defines that term as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new

transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

- (m) “**eligible support structure**” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”
- (n) “**existing**” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), 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.”
- (o) “**FCC**” means the “Federal Communications Commission”, as constituted by the Communications Act of 1934, Pub. L. 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (p) “**Fire Safety Authority**” means the Livermore-Pleasanton Fire Department or their designee.
- (q) “**ministerial permit**” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, excavation permit, traffic control permit, encroachment permit and/or any similar over-the-counter approval issued by the City’s departments.
- (r) “**Municipal Code**” means the City of Pleasanton Municipal Code.
- (s) “**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (t) “**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which defines the term as facilities that provide personal wireless services.
- (u) “**RF**” means radio frequency.
- (v) “**Section 6409**” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).

- (w) **“shot clock”** means the presumptively reasonable time defined by the FCC, or time specified under state law, if applicable, in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (x) **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), which provides that “[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.”
- (y) **“substantial change”** or **“substantially change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), which defines that term differently based on the particular facility type and location. For clarity, the definition in this policy organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
 - (1) For towers outside the public rights-of-way, a substantial change occurs when:
 - (A) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or
 - (B) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - (C) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (D) the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
 - (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

- (A) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - (B) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - (C) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - (D) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - (E) the proposed collocation or modification involves excavation or deployment 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 support structure as 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.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

- (z) “**tower**” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services,

as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.

- (aa) **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), which defines that term as “[e]quipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.”
- (bb) **“wireless”** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Section 4. APPLICABILITY

This policy applies to all requests for the City’s regulatory authorization to collocate, replace or remove transmission equipment at an existing wireless tower or base station, within the City’s territorial or jurisdictional limits, whether on private property or in the public rights-of-way, submitted for approval pursuant to Section 6409.

Section 5. REQUIRED PERMITS AND APPROVALS

- (a) **EFR Approval.** No person or entity may collocate, replace or remove transmission equipment at or in connection with an existing wireless tower or base station without an EFR Approval issued by the approval authority pursuant to this policy. The purpose of an EFR Approval is to confirm that a proposed collocation or other modification meets the criteria for mandatory approval under applicable federal regulations. Each EFR Approval shall be deemed to be an amendment to the underlying permit that authorizes the existing wireless tower or base station to be modified.
- (b) **Other Permits and Regulatory Approvals.** In addition to an EFR Approval required under this policy, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, regional or local government agencies, which includes without limitation any permits and/or approvals issued by other City departments or divisions such as encroachment permits for work or facilities in the public right-of-way, before any person or entity collocates, replaces or removes transmission equipment at or in connection with the existing wireless tower or base station. Any application for any for ministerial permits submitted in connection with a proposed EFR Approval must contain a valid EFR Approval issued by the City for the proposed wireless facility. Any application for any ministerial permits submitted without such EFR Approval may

be denied without prejudice. Any EFR Approval granted under this policy or deemed granted or deemed approved by the operation of law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

Section 6. ADMINISTRATIVE ORDERS AND REGULATIONS

In addition to the requirements in this policy, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. The Director is also authorized to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for submittal appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated.

Section 7. PERMIT APPLICATIONS

- (a) **Application Required.** The approval authority shall not approve any EFR Approval application except upon a complete and duly filed application consistent with this section and any other written rules or requirements the City or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Fee/Deposit.** The applicant shall submit the applicable EFR Approval permit application fee, application review deposit, or combination application fee and review deposit adopted by City Council resolution at the time of application. If no EFR Approval application fee, application review deposit, or combination application fee and review deposit has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application within 10 business days after the City issues a written demand for reimbursement. Additional deposits shall be required if the deposit is inadequate and must be replenished. If the deposit exceeds the actual costs, the difference will be returned to the applicant following final inspection in event of an approval, withdrawal of the application, or the conclusion of any appeals or expiration of any appeal periods, whichever occurs later, in event of a denial.
- (c) **Application Content.** All applications for an EFR Approval must include all the information and materials required by the Director for the application. The Director is authorized to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements must be in written form and publicly stated and available. Notwithstanding anything in this policy to the contrary, all applications shall, at a minimum, require the

applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which include without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

- (d) **Voluntary Pre-Application Conferences.** The Department shall provide prospective applicants with the opportunity to schedule and attend a voluntary pre-application conference with Department staff. The City strongly encourages, but does not require, pre-application conferences for all applications. This voluntary pre-application conference process, including but not limited to any requests for conferences or meetings, submittal of pre-application materials, or the occurrence of any conferences or meetings, does not, and shall not be deemed to, commence any shot clocks. This voluntary pre-application conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential stealth or concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Department shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-application conference.
- (e) **Application Submittal.** Unless the Director establishes an alternative submittal procedure pursuant to Section 6, all applications submitted, or resubmitted in response to an incomplete notice as the case may be, under this policy must be submitted to the Department through the online permitting portal only during the Department's "Permit Center Hours" as published on the Department's website. The Department's Permit Center Hours exclude City holidays or other days that the City is closed. Any applications submitted, or resubmitted as the case may be, after such Permit Center Hours will be deemed submitted, or resubmitted, and received by the Department at the start of "Permit Center Hours" on the next scheduled working day. Any application received in a manner not authorized by this policy or alternatives established by the Director, whether delivered in-person, by mail, electronically or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.
- (f) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any EFR Approval application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender

a substantive response to the Department within 90 calendar days after the Department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 60 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

Section 8. PEER AND INDEPENDENT CONSULTANT REVIEW

- (a) **Authorization.** The Director is authorized to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues in connection with any EFR Approval application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (1) permit application completeness and/or accuracy; (2) compliance with applicable regulations for human exposure to RF emissions; (3) whether and to what extent a proposed project will comply with applicable laws, including but not limited to this policy; (4) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (5) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.
- (b) **Cost Reimbursement / Deposit.** Subject to applicable laws, if the Director elects to retain an independent consultant in connection with any permit application, then the applicant shall be responsible for the actual and reasonable costs incurred by the City in connection with the services provided, which may include, without limitation, actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings related to the permit application and the City's actual and reasonable costs incurred to administer the independent consultant contract. The applicant shall tender to the City a deposit in an amount equal to the estimated actual and reasonable cost for the services to be provided, as determined by the Director if no deposit amount has been established and paid pursuant to Section 7(b) of this policy. The deposit funds shall be applied to the independent consultant's invoices as such invoices are approved by the Director. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. If the deposit exceeds the total costs for the independent consultant's services, then the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection. If the reasonable costs for the independent consultant's services exceed the deposit, then the Director shall invoice the applicant for the

balance. The Director is authorized to develop, publish and from time-to-time, update a standard deposit agreement consistent with this section. The City shall not issue any construction or encroachment permits to any applicant with any unpaid deposit requests or invoices.

- (c) **Fire Safety Authority Independent Consultants.** In addition, the Fire Safety Authority has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Safety Authority in connection with any application. The Fire Safety Authority may request independent consultant review on any matter referred or committed to the Fire Safety Authority for review or approval. Subject to applicable laws, in the event that the Fire Safety Authority elects to retain an independent consultant in connection with any application, the applicant shall be responsible for the actual and reasonable costs in connection with the services provided, which may include without limitation any actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings and the Fire Safety Authority's actual and reasonable costs to administer the independent consultant contract. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described above in Section 8(b) shall be applicable to independent consultant review required by the Fire Safety Authority.

Section 9. APPROVALS; DENIALS; APPEALS

- (a) **Initial Notice and Administrative Review.** The approval authority shall review a complete and duly filed application for an EFR Approval and may act on such application without prior notice or a public hearing.
- (b) **Required Findings for Approval.** The approval authority may approve or conditionally approve an application for an EFR Approval when the approval authority finds that the proposed project:
 - (1) involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - (2) does not substantially change the physical dimensions of the existing wireless tower or base station.
- (c) **Criteria for Denial.** Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for an EFR Approval when the approval authority finds that the proposed project:
 - (1) does not meet the findings required in Section 9(b) of this policy;
 - (2) involves the replacement of the entire support structure; or

- (3) violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- (d) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this policy is intended to limit the approval authority's authority to conditionally approve an application for an EFR Approval to protect and promote the public health and safety.
- (e) **Decision Notices.** Within five days after the approval authority acts on an application for an EFR Approval, the approval authority shall send a written notice to the applicant. If the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal if the applicant so chooses.
- (f) **Appeals.** Any applicant may appeal the approval authority's written decision to deny without prejudice an application for EFR Approval to the City Manager provided that: (1) an appeal notice must be filed with the City Clerk within seven calendar days from the date of the approval authority's decision; (2) an appeal must be timely and duly filed with the City Clerk on a form provided by the City Clerk, or if no such form is available, in a writing that states in plain terms the grounds for appeal and the facts that support those grounds; and (3) the City Manager shall consider appeals *de novo* without notice or a public hearing; provided, however, that the City Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this policy and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further City appeals or petitions for reconsideration. No persons or entities other than the applicant may initiate the appeal process described in this section; however, nothing in this section is intended to prevent or discourage any interested persons or entities from providing the City with information that may be used to initiate permit revocation proceedings.

Section 10. STANDARD CONDITIONS FOR APPROVED PERMITS

- (a) **Standard Conditions.** Except as may be authorized in Section 10(b), all EFR Approvals issued under this policy or deemed granted or deemed approved by the operation of law shall be automatically subject to the conditions in this Section 10(a) and these conditions shall be deemed to be incorporated by reference into such EFR Approvals.
- (1) **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR Approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or

base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR Approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization in connection with the wireless tower or base station to be modified. Accordingly, the term for this EFR Approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof.

- (2) **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any eligible facilities request(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facilities requests or the approval authority 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 approval authority may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated eligible facilities request when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.
- (3) **City's Standing Reserved.** The City's grant or grant by operation of law of an EFR Approval pursuant to this policy does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409, any eligible facilities request or any EFR Approval issued pursuant to this policy.
- (4) **Compliance with Approved Plans.** Before the permittee submits any applications to the building official required to commence construction in connection with this EFR Approval, the permittee must incorporate this EFR Approval, all conditions associated with this EFR Approval and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, 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 wireless facility, must be submitted in a written request subject to the approval authority's prior review and approval. The approval authority may revoke the EFR Approval if the approval authority finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended.

- (5) **CPUC GO-159A Certification.** Within 15 business days after the City's grant of this EFR Approval or any EFR Approval is deemed granted or deemed approved by the operation of law, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (6) **Build-Out Period.** This EFR Approval will automatically expire 12 months from the approval date or deemed granted or deemed approved date (the "**Build-Out Period**") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the Director may grant in writing, one 12-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, substantial and reliable written evidence demonstrating justifiable cause for the 12-month extension submitted. If the Build-Out Period (and any extension) finally expires, this EFR Approval shall be automatically void but the permittee may resubmit a complete application, which includes without limitation all application fees, for the same or a substantially similar project.
- (7) **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices ("**BMPs**") pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee's installation of such temporary BMPs.
- (8) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations at the wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the Approved Plans. Such documentation shall include, without limitation, electronic as-built drawings prepared by a California licensed civil engineer, GIS data and site photographs. In a written notice to the permittee, the Director may (but shall not have the obligation to) either certify that the wireless facility complies with the Approved Plans or order the permittee to correct any noncompliance.

- (9) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code compliant condition in accordance with the Approved Plans and all conditions in this EFR Approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to the City's normal construction work hours specified in the Municipal Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 24 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (10) **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (11) **Compliance with Applicable Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this EFR Approval, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may (A) require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the wireless facility that certifies that the wireless facility is in compliance with all such Laws; or (B) require that a field test to measure the RF exposure levels be conducted by an independent consultant. Any field measurement tests conducted by the City or its independent consultant shall be at random times without prior notice to the permittee or site operator. The Director shall require an onsite compliance test in situations where applicable Laws would authorize the City to require such testing at the permittee's expense. The Director may order the facility to be immediately powered down if, based on objective evidence, the Director finds that the wireless facility is in fact not in compliance with any Laws applicable,

including, without limitation, Laws applicable to human exposure to RF emissions until such time that the permittee demonstrates actual compliance with such Laws. 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. No failure or omission by the City to timely notice, prompt or promptly enforce compliance with any applicable provision in this policy, the Municipal Code, any permit, any permit condition or any applicable Laws shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in this policy, the Municipal Code, any permit, any permit condition or any applicable Laws.

- (12) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, 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 on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during the City's normal construction work hours authorized by the Municipal Code or as may be specified in other permits authorizing such work. 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 or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a wireless facility or related equipment violates applicable provisions in this policy or the Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Municipal Code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the wireless facility's compliance. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director, the City may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
- (13) **Annual Affirmation of Radio Frequency Standards Compliance.** On or before January 30th in each calendar year, the permittee acknowledges and agrees that the permittee shall submit: (A) an affirmation, signed by an RF

engineer familiar with the then-current equipment deployed and operated at the wireless facility under penalty of perjury, that the installation is operated in compliance with 47 U.S.C. § 324; (B) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the wireless facility under penalty of perjury, that the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC; and (C) a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the wireless facility. All radio frequency emissions on all frequency bands must be shown on the Appendix A form(s). All radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

- (14) **Interference with City Communications Systems.** The permittee shall not permit the wireless facility authorized under this EFR Approval to interfere with any City communication systems. In the event that the wireless facility is causing interference with any City communication systems, the Director may order the wireless facility to be shut down and powered off until such time as the immediate interference has been mitigated at the permittee's sole cost and expense. If, after a good faith effort is made to notify the permittee without success, the City may shut down the facility. Any costs incurred by the city shall be at the permittee's sole cost and expense.
- (15) **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility and related equipment and/or improvements upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees 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, if present, may observe the City's officers, officials, staff, agents, contractors or other designees while any such inspection or emergency access occurs.
- (16) **Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may order the wireless facility to be shut down and powered off until such time as the immediate threat has been mitigated, after a good faith effort is made to notify the permittee, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.

- (17) **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this EFR Approval. In addition, the wireless facility authorized under this EFR Approval shall be deemed abandoned if the wireless facility has not operated for any continuous six-month period and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation, this policy and the Municipal Code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after the wireless facility is abandoned or deemed abandoned, which the Director may grant if the permittee, property owner or structure owner presents evidence of good cause for the extension. If neither the permittee, the property owner nor the structure owner complies with the removal and restoration obligations under this condition within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (18) **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this EFR Approval, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following:
- (A) the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
 - (B) the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the wireless facility's continued operation;
 - (C) the wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and

- (D) a toll-free telephone number to the wireless facility's network operations center where a live person with power-down control over the wireless facility is available 24 hours-per-day, seven days-per-week.

If the entity for the permittee, property owner, structure owner, site operator, equipment owner, site manager, or agent for service of process changes, the permittee shall furnish the City with updated information within 10 business days.

Additionally, the permittee must update the signage at the wireless facility to accurately identify the equipment owner/operator, the owner/operator's site name or identification number and the 24 hours-per-day, seven day-per-week, toll-free telephone number to the owner/operator's network operations center whenever such information about the same changes

- (19) **Indemnification.** The permittee and, if applicable, the owners of the property and the structure upon which the wireless facility is installed (other than the City), shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers (collectively, the "**City Indemnitees**") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or any City Indemnitees to challenge, attack, seek to modify, set aside, void or annul this EFR Approval, the City's grant of this EFR Approval or the grant of this EFR Approval by the operation of law, and (B) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this EFR Approval, the City's grant of this EFR Approval, the grant of this EFR Approval by the operation of law or the wireless facility. If the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the owners of the property and the structure (if applicable) and shall reasonably cooperate in the defense. The permittee, property owner and structure owner expressly acknowledge and agree that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee, property owner and/or structure owner shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee, property owner and structure owner expressly acknowledge and agree that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this EFR Approval, and that such indemnification obligations will survive the expiration, revocation or other termination of this EFR Approval.

(20) Insurance.

(A) **Policies and Limits.** The permittee shall obtain and maintain insurance policies as follows:

- (i) **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability ("CGL") on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
- (ii) **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- (iii) **Workers' Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- (iv) **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee's profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors

or omissions of the permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under this permit.

- (B) **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- (C) **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- (D) **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- (E) **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies.
- (F) **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days' prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail

to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.

- (G) **Certificates.** Before the City issues any EFR Approval or permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
- (H) **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
- (21) **Removal Bond.** Before the building official or department issues any permits required to commence construction, installation or other work in connection with this EFR Approval, the permittee shall post a bond issued by a surety and in a form acceptable to the City Attorney and the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for at least 10 years or the term of the underlying permit or other prior regulatory authorization for the subject tower or base station (whichever is greater). In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable Laws. The bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increased costs.
- (22) **Record Retention.** Throughout the term of the underlying permit, the permittee must maintain a complete and accurate copy of the written administrative

record, which includes without limitation the EFR Approval application, EFR Approval, the approved plans and photo simulations incorporated into this EFR Approval, all conditions associated with this EFR Approval, any ministerial permits or approvals issued in connection with this EFR Approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the EFR Approval (collectively, "**Records**"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the City's regular files will control over any conflicts between such City-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation for the City to create or prepare any Records not otherwise required to be created or prepared other applicable Laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.

- (23) **Permit Revocation.** Any EFR Approval granted under this policy or deemed granted or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. In addition to any other remedies the City may have, the City may recall this EFR Approval for review at any time due to complaints about noncompliance with applicable Laws or any approval conditions attached to this EFR Approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance continues after notice and reasonable opportunity to cure the noncompliance, the approval authority may revoke this EFR Approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance. Any revocation or amendment must be supported by substantial evidence in the written record. Within five business days after the approval authority adopts a resolution to revoke the EFR Approval, the approval authority shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation and any administrative appeal procedures.
- (24) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the collocated or otherwise modified wireless facility will cause the City to incur costs and expenses; (B) the permittee shall be responsible to reimburse the City for all actual and reasonable costs incurred in connection with the EFR Approval, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the

collocated or otherwise modified wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- (25) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the EFR Approval or the collocation or other modification authorized under the EFR Approval, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
 - (26) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this EFR Approval will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
 - (27) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this EFR Approval; (B) all other provisions in this EFR Approval or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this EFR Approval or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The approval authority (or appellate authority) may modify, add or remove conditions to any EFR Approval on a case-by-case basis as the approval authority (or appellate authority) deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this policy, the Municipal Code, generally applicable health and safety requirements and/or any other applicable Laws.