



TOWN OF FAIRFAX

STAFF REPORT

September 26, 2018

TO: Mayor and Council

FROM: Garrett Toy, Town Manager 

SUBJECT: Introduce and adopt an urgency ordinance of the Town of Fairfax repealing and replacing Title 19 ("Telecommunications") of the Fairfax Municipal Code to establish new, comprehensive regulations for wireless telecommunication facilities including the regulation of the installation, operation and maintenance of wireless telecommunications within the Town on private property and within the Town's public rights-of-way; CEQA exempt Section 15060(c)(2), Section 15378, Section 15061(b)(3), Section 15305, and Section 15303

RECOMMENDATION

Introduce and adopt "An urgency ordinance of the Town of Fairfax repealing and replacing Title 19 ("Telecommunications") of the Fairfax Municipal Code to establish new regulations for wireless telecommunication facilities."

A four-fifths vote is required to adopt an urgency ordinance.

BACKGROUND

Wireless telecommunications facilities (WCF) are regulated by federal, state, and local laws. Federal law significantly limits the Town's ability to regulate WCF's. Under federal law, a local agency's decisions cannot have the effect of prohibiting the provision of wireless service or unreasonably discriminating among wireless service providers. In addition, under federal law, *the Town may not regulate the placement, construction, or modifications of wireless communications facilities based on the environmental effect of radio frequency (RF) emissions, so long as the facilities comply with the Federal Communication Commission (FCC) regulations concerning such emissions.* State law grants a statutory franchise to telephone companies that allows them to place facilities in the public rights of way (including wireless providers and wireless facilities) provided that such use does not "incommode the public use" of the public rights of way. Despite state and federal limitations, towns have historically retained the ability to regulate development standards (e.g., aesthetics, safety, ADA) and locational preferences.

There is increased demand for new wireless antennas and equipment by wireless providers. In October 2017, Governor Jerry Brown vetoed SB 649, "small-cell" bill, which would have further limited local authority over siting smaller WCFs. There is currently a similar bill (S. 3157), which the Town has opposed, being discussed by Congress which would further preempt local discretion over wireless facilities. The Federal Communications Commission (FCC) recently issued a broad declaratory order banning local governments from adopting express or de facto moratoria on processing permits for communications facilities deployments and on September 26, is expected to take further action to preempt local authority (discussed further below).

In addition to the actions currently being contemplated at the federal level, there have been a number of state and federal laws and regulations adopted since 1999, including Federal Communications Commission orders establishing "shot clocks" for local decisions on wireless

AGENDA ITEM # 

applications, a federal law adopted in 2012 (Spectrum Act) that requires applications for certain types of modifications to existing wireless facilities to be approved, and a state law adopted in 2015 (AB 57) that can operate to “deem approved” applications that are not acted on before the applicable federal “shot clock” expires. With all the changes in technology and state and federal law, the Town will need to revise and update the existing code which would include addressing small cell attachments.

The Town’s current wireless telecommunications facility regulations were adopted in 1999 and are contained in Title 19: Telecommunications of the Town’s municipal code. This section of the Code has not been modified since its adoption and was adopted to address large cell phone towers.

At its September 5, 2018 meeting, the Council discussed the general policy issues regarding small cell facilities, received public comment, and referred the matter to the Planning Commission (PC) to develop development standards, application requirements, permitting process, and locational and configuration preferences.

DISCUSSION

The FCC has scheduled a meeting on September 26, 2018 to “consider a Declaratory Ruling and Report and Order that will clarify the scope and meaning of Sections 253 and 332(c)(7) of the Communications Act, establish shot clocks for state and local approvals for the deployment of small wireless facilities, and provide guidance on streamlining state and local requirements on wireless infrastructure.” If approved, the ruling would significantly preempt local authority to regulate certain aspects of wireless telecommunications facilities, by among other things, imposing new shorter shot clocks on the processing of “small wireless facilities” and requiring aesthetic requirements to be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) published in advance.

Given this potential FCC action, the increased industry interest in construction of small-cell facilities in the public right-of-way, and the lack of clear criteria to process applications for small wireless telecommunications facilities in a consistent and expeditious manner and within the limits of federal and state law, it is critical that the Town update its regulations to reflect current federal and state law and recent trends in wireless facilities deployments.

The adoption of an urgency ordinance will immediately establish standards to ensure that the Town is able to limit disruption to the public right-of-way as well as impose aesthetic regulations on new facilities. This proposed urgency ordinance provides an extensive and comprehensive list of procedures and regulations that allow the community, applicant and Town staff to understand how facilities are regulated, installed, maintained and operated within the Town. Please note the ordinance does not discuss the actual FCC “shot clocks” and/or timeframes. Instead the shot clock and timeframes would be addressed as part of the application and informational handouts.

The ordinance is being proposed as an urgency ordinance which would be adopted pursuant to Government Code Section 36937(b). Under that section, ordinances adopted to protect the health, safety, and welfare with a four-fifths vote of the Town Council become effective immediately.

The urgency ordinance is an interim ordinance until the Town can adopt a permanent ordinance through the regular ordinance approval process which requires Planning Commission review and recommendation to the Town Council.

Urgency Ordinance

The proposed urgency ordinance provides uniform and comprehensive regulations for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the Town. The ordinance is similar to recent regulations enacted in Mill Valley, which is modeled after those of San Anselmo and Ross. In essence, staff and the Town Attorney modified the Mill Valley ordinance to reflect Fairfax's zoning code and to clarify some provisions, otherwise the ordinances are almost identical in content.

The ordinance also imposes some additional requirements on telecommunications facilities that are pole mounted to the existing public utility infrastructure (known as "small cell wireless facilities"), based on community interest and recent regulations established in Petaluma.

The key regulations contained in the proposed ordinance are as follows (note: these provisions are also included in the Mill Valley ordinance):

1. Ensures that the FCC standards regulating radio frequency emissions are strictly followed. The conditions of approval will require annual documentation demonstrating compliance with current FCC regulatory and operational standards including, but not limited to, radio frequency emissions. The Town may retain a consultant, at the sole expense of the permittee, to perform the required testing.
2. *Establishes an application process for a conditional use permit and design review*, with additional specific conditions for those use permits in the public right-of-way. The CUP expires in 10 years unless a renewal is requested and approved by the Town. Projects in the public right-of-way are also required to obtain encroachment permits.
3. Prescribes the content for an application for a wireless telecommunications facility permit. The application requires the submission of detailed site and engineering plans, photographs of facility equipment, a visual impact analysis with photo simulations, a noise study, and certification that the applicant has a right under state law to install facilities in the public right of way if that is the proposed location of the facilities. Also, the Town may hire a technical consultant to assist the Town in the review of the application at the expense of the applicant.
4. *Prohibits wireless facilities in residential zones and public right-of-way in residential zones.*
5. Limits the location of new or updated wireless facilities to private property within commercial and public domain (e.g., library and town hall) zoning districts and the adjacent public rights-of-way with an order of preference in terms of location within commercial areas and configuration aimed toward existing facilities.
6. Limits the installation of new wireless facilities in the public right-of-way to existing poles that *must be at least 1,500 feet away from the nearest facility*. Similar to Mill Valley, we did

not include a buffer zone from residential units. However, the Planning Commission can further evaluate if such a provision would be legally feasible to include in a regular ordinance.

7. Establishes design standards for the appearance and maintenance of facilities, including, but not limited to, limiting the height and bulk of facilities, concealing/hiding accessory equipment to the extent feasible such as undergrounding, setting preferences in collocating facilities, and complying with ADA standards.
8. Imposes strict noise standards pursuant to Town Code.
9. Where feasible, requires upgrades to existing facilities as new technology becomes available to replace larger more visually intrusive facilities with smaller facilities.
10. Requires the relocation of any facility in the public right-of-way that would interfere with a future public project or improvements.
11. Requires a performance bond to ensure that facilities are promptly removed when they are no longer permitted or needed.
12. Requires the permittee to defend and indemnify the Town from any liabilities arising from the permits issued by the Town and the installation, operation and maintenance of the facilities.
13. As required, the proposed ordinance allows an applicant to request an exception from the standards in the event that denial of a permit would violate federal or state law. The applicant has the burden of providing sufficient facts to support the request.
14. Based on existing provisions of the Town's Zoning Code, initial wireless facility CUP applications will be heard by the Planning Commission. Smaller subsequent amendments to wireless facility CUPs, such as modifying or collocating equipment, will undergo Zoning Administrator (Planning Director) approval. Amendments to CUPs that involve significant design review issues or are deemed as significant projects by the Planning Director will be heard by the Planning Commission.
15. Provides an expedited approval process for those wireless telecommunications facility applications that qualify as "eligible facilities requests" under federal law, and therefore must be approved within sixty (60) days. These applications are evaluated and acted on by the Zoning Administrator, with the opportunity for appeal to the Town Manager.

EFFECTIVE DATE/NEXT STEPS

The urgency ordinance becomes effective immediately. Any wireless facilities currently in operation will be subject to the new regulations with regard to operation, maintenance, and use.

As stated above, the urgency ordinance is an interim ordinance until the Town can process a permanent ordinance through the regular ordinance approval process which requires Planning Commission review and recommendation to the Town Council. Staff intends to bring the regular ordinance to the Planning Commission (PC) for consideration at its October meeting. At that meeting, staff and the Town Attorney will have had sufficient time to review the ordinance within

the context of the Town's zoning code and geography (as well as review the final rules adopted by the FCC), and may recommend revisions for the PC to consider.

ENVIRONMENTAL REVIEW

The proposed repeal and replacement of Fairfax Municipal Code, Chapter 19 "Telecommunications" is exempt from the California Environmental Quality Act ("CEQA"). Adoption of this Ordinance will 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. 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 small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have 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 Ordinances and Resolution comprise a project for CEQA analysis, the ordinance 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." Finally, the wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure.

FISCAL IMPACT

Once the regulations are approved and implemented, the application fees for a Conditional Use Permit and Design Review would cover the cost of the discretionary approvals.

ATTACHMENT

Proposed Ordinance

ORDINANCE NO. 18-__

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
REPEALING AND REPLACING TITLE 19 ("TELECOMMUNICATIONS") OF THE FAIRFAX
MUNICIPAL CODE TO ESTABLISH NEW REGULATIONS FOR WIRELESS
TELECOMMUNICATION FACILITIES**

1 **WHEREAS,** This Ordinance is adopted as an urgency ordinance pursuant to Government
2 Code Section 36937(b). The facts constituting the urgency are as follows:

3
4 (1) The purpose of this Ordinance is to update the Town's Municipal Code to provide
5 uniform and comprehensive standards, regulations and permit requirements for the installation
6 of wireless telecommunications facilities in the Town including on private property and in the
7 Town's public right-of-way.

8
9 (2) The wireless telecommunications industry has expressed interest in submitting
10 applications for the installation of "small cell" wireless telecommunications facilities in the Town
11 's public rights-of-way. Other California cities have already received applications for small cells
12 to be located within the public right-of-way.

13
14 (3) If not adequately regulated, installation of small cell and other wireless
15 telecommunications facilities within the public right-of-way can pose a threat to the public
16 health, safety and welfare, including disturbance to the public right-of-way through the
17 installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to
18 the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require
19 unnecessary trimming of branches or require removal of roots due to related undergrounding of
20 equipment or connection lines; land use conflicts and incompatibilities including excessive height
21 or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising
22 from excessive size, heights, noise or lack of camouflaging of wireless facilities including the
23 associated pedestals, meters, equipment and power generators; and the creation of unnecessary
24 visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on
25 collocation opportunities which may negatively impact the unique quality and character of the
26 Town .

27
28 (4) The Town currently regulates wireless telecommunications facilities through the
29 zoning permit process that was enacted as Title 19 in 1999. The existing standards have not been
30 updated to reflect current telecommunications trends or necessary legal requirements. Further
31 the primary focus of the zoning regulations is wireless telecommunications facilities located on
32 private property, and the existing Code provisions were not specifically designed to address the
33 unique legal and practical issues that arise in connection with wireless telecommunications
34 facilities deployed in the public right-of-way.

36 (5) The Federal Telecommunications Act of 1996 preempts and declares invalid state
37 or local rules that "prohibit" the provision of interstate or intrastate telecommunications service
38 or personal wireless services.
39

40 (6) The California Public Utilities Commission (CPUC) is primarily responsible for the
41 implementation of local telephone competition and the CPUC issues certificates of public
42 convenience and necessity to new entrants that are qualified to provide competitive local
43 telephone exchange services and related telecommunications service, whether using their own
44 facilities or the facilities or services provided by other authorized telephone corporations.
45

46 (7) Section 234(a) of the California Public Utilities Code defines a "telephone
47 corporation" as "every corporation or person owning, controlling, operating, or managing any
48 telephone line for compensation within this state."
49

50 (8) Section 616 of the California Public Utilities Code provides that a telephone
51 corporation "may condemn any property necessary for the construction and maintenance of its
52 telephone line."
53

54 (9) Section 2902 of the California Public Utilities Code authorizes municipal
55 corporations to retain their powers of control to supervise and regulate the relationships
56 between a public utility and the general public in matters affecting the health, convenience, and
57 safety of the general public, including matters such as the use and repair of public streets by any
58 public utility and the location of the poles, wires, mains, or conduits of any public utility on, under,
59 or above any public streets.
60

61 (10) Section 7901 of the California Public Utilities Code authorizes telephone and
62 telegraph corporations to construct telephone or telegraph lines along and upon any public road
63 or highway, along or across any of the waters or lands within this state, and to erect poles, posts,
64 piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their
65 lines, in such manner and at such points as not to incommode the public use of the road or
66 highway or interrupt the navigation of the waters.
67

68 (11) Section 7901.1 of the California Public Utilities Code confirms the right of
69 municipalities to exercise reasonable control as to the time, place, and manner in which roads,
70 highways, and waterways are accessed, which control must be applied to all entities in an
71 equivalent manner, and may involve the imposition of fees.
72

73 (12) Section 50030 of the California Government Code provides that any permit fee
74 imposed by a Town for the placement, installation, repair, or upgrading of telecommunications
75 facilities, such as lines, poles, or antennas, by a telephone corporation, must not exceed the
76 reasonable costs of providing the service for which the fee is charged, and must not be levied for
77 general revenue purposes.

78 (13) State and federal law have changed substantially since the Town last adopted
79 regulations for wireless telecommunications facilities in the Town. Such changes include
80 establishing "shot clocks" whereby the Town must approve or deny installations within a certain
81 period of time. State and federal laws and regulations require local governments to act on permit
82 applications for wireless facilities within a prescribed time period and may automatically deem
83 an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R.
84 §§ 1.40001 et seq.; Cal. Gov't Code § 65964.1. Under federal law, a decision on certain
85 applications must be made in as few as 60 days. Pursuant to FCC regulations, the Town cannot
86 adopt a moratorium ordinance to toll the time period for review for certain type of facilities, even
87 when needed to allow the Town to maintain the status quo while it reviews and revises its
88 policies for compliance with changes in state or federal law. The Town is in immediate need of
89 clear regulations for wireless installations in the public right-of-way given the number of
90 anticipated applications and legal timelines upon which the Town must act.

91
92 (14) The public right-of-way in the Town is a uniquely valuable public resource, closely
93 linked with the Town's natural beauty, and significant number residential communities. The
94 reasonably regulated and orderly deployment of wireless telecommunications facilities including
95 in the public right-of-way is desirable, and unregulated or disorderly deployment represents an
96 ever-increasing and true threat to the health, welfare and safety of the community.

97
98 (15) The regulations of wireless installations including in the public right-of-way are
99 necessary to protect and preserve the aesthetics in the community, as well as the values of
100 properties within the Town, and to ensure that all wireless telecommunications facilities are
101 installed using the least intrusive means possible.

102
103 (16) The Town finds that in light of more recent developments in federal and state law
104 with respect to the regulation of small cell and other wireless telecommunications facilities, there
105 is an urgent need for the Town to update its current ordinances based on current
106 telecommunications trends, updates in laws, as well as aesthetic and location options for wireless
107 facilities. The Town Council also finds that the lack of specifically-designed standards and
108 regulations in the Municipal Code for wireless facilities located in the public right-of-way, the
109 increasing requests for information about the Town's regulation of wireless telecommunications
110 facilities, the inability to adopt a temporary moratorium, and the potential liabilities and negative
111 consequences for noncompliance with state and federal regulations (including, without
112 limitation, the ability for applicants to invoke deemed approval remedies) present current and
113 immediate threat to the public health, safety and welfare. The Town Council further finds and
114 declares that the immediate implementation of the Ordinance is necessary to preserve and
115 protect public health, safety and welfare.

116
117 (17) The Town recognizes its responsibilities under the Federal Telecommunications
118 Act of 1996 and state law, and believes that it is acting consistent with the current state of the
119 law in ensuring that irreversible development activity does not occur that would harm the public
120 health, safety, or welfare. The Town 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 including in the public right-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.

Based on the foregoing, the Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

WHEREAS, adoption of this Ordinance is consistent with the Town 's General Plan. The Town 's General Plan provides goals and policies to preserve the high-quality design, small-Town character, aesthetics and environmental characteristics while also maintaining a strong, healthy economy for its local business and assuring the health and safety of the predominantly residential character of the community. Adoption of this Ordinance will provide uniform and comprehensive regulations and standards for wireless telecommunications facilities in furtherance of these goals and objectives while reducing the potentially negative impacts.

NOW, THEREFORE, the Town of Fairfax Town Council does ordain as follows:

Section 1. The Fairfax Municipal Code is hereby amended as follows: Title 19 of the Fairfax Municipal Code is hereby repealed and replaced in its entirety to read as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full herein.

Section 2. The Town Council hereby finds that Adoption of this Ordinance will 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. The wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure. The 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 small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have 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 Ordinances and Resolution comprise a project for CEQA analysis, the ordinance 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.”

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

Section 4. Notice. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code.

Section 5. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be posted in three public places in the Town .

INTRODUCED at a regular meeting of the Town Council of the Town of Fairfax on the ____th day of _____ September, 2018, and

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Fairfax on this ____th day of _____ September, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Peter Lacques, Mayor

ATTEST:

Michele Gardner, Town Clerk

Exhibit A
URGENCY ORDINANCE

Title 19: Telecommunications
Chapter 19.04. WIRELESS TELECOMMUNICATIONS FACILITIES

19.04.010 Purpose

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

B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; or (5) prohibit any collocation or modification that the Town may not deny under federal or state law.

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

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

B. **"Antenna"** means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points

(Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

C. **“Base Station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which currently 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. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(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. § 1.40001(b)(1)(i)-(ii).

D. **“Building-mounted”** means mounted to the side or façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

E. **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which currently defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.

F. **“Eligible Facilities Request”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which currently 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: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which currently defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

72 H. **"Existing"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be
73 amended, which currently provides that a constructed tower or base station is existing for purposes
74 of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable
75 zoning or siting process, or under another State or local regulatory review process, provided that a
76 tower that has not been reviewed and approved because it was not in a zoned area when it was built,
77 but was lawfully constructed, is existing for purposes of this definition.

78 I. **"FCC"** means the Federal Communications Commission or its duly appointed successor
79 agency.

80 J. **"Modification"** means any change to an existing wireless telecommunications facility that
81 involves any of the following: collocation, expansion, modification, alteration, enlargement,
82 intensification, reduction, or augmentation, including, but not limited to, a change in size, shape,
83 color, visual design, or exterior material. Modification does not include repair, replacement, or
84 maintenance if those actions do not involve a change to the existing facility involving any of the
85 following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or
86 augmentation.

87 K. **"Personal Wireless Services"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may
88 be amended, which defines the term as commercial mobile services, unlicensed wireless services and
89 common carrier wireless exchange access services.

90 L. **"Personal Wireless Service Facilities"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i),
91 as may be amended, which defines the term as facilities that provide personal wireless services.

92 M. **"Zoning administrator"** means the Town 's Planning and Building Services Director or his/her
93 designee.

94 N. **"Pole"** means a single shaft of wood, steel, concrete, or other material capable of supporting
95 the equipment mounted thereon in a safe and adequate manner and as required by provisions of the
96 Fairfax Municipal Code.

97 O. **"Public Right-of-Way or "Right-of-Way"** means any public street, public way, public alley or
98 public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof,
99 and additions thereto, under the jurisdiction of the Town.

100 P. **"Reviewing Authority"** means the person or body who has the authority to review and either
101 grant or deny a wireless telecommunications facility permit pursuant to this chapter.

102 Q. **"RF"** means radio frequency or electromagnetic waves.

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

S. **“Section 6409(a)”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as such law may be amended from time to time.

T. **“Section 6409(a) Approval”** means the approval required by Section 6409(a).

U. **“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

V. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which currently defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

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 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 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 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

139 equipment cabinets on the ground when there are no existing ground-mounted
140 equipment cabinets; or

141 d) the proposed collocation or modification involves the installation of any new ground-
142 mounted equipment cabinets that are ten percent (10%) larger in height or volume
143 than any existing ground-mounted equipment cabinets; or

144 e) the proposed collocation or modification involves excavation outside the area in
145 proximity to the structure and other transmission equipment already deployed on the
146 ground.

147 3. In addition, for all towers and base stations wherever located, a substantial change occurs
148 when:

149 a) the proposed collocation or modification would defeat the existing concealment
150 elements of the support structure as determined by the zoning administrator; or

151 b) the proposed collocation or modification violates a prior condition of approval,
152 provided however that the collocation need not comply with any prior condition of
153 approval related to height, width, equipment cabinets or excavation that is
154 inconsistent with the thresholds for a substantial change described in this section.

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

162 W. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, guyed tower, lattice
163 tower, free standing tower or other structure designed and primarily used to support wireless
164 telecommunications facility antennas. For the purposes of “Eligible Facilities Requests”, the term
165 “Tower” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended,
166 which currently defines that as any structure built for the sole or primary purpose of supporting
167 any FCC-licensed or authorized antennas and their associated facilities, including structures that
168 are constructed for wireless communications services including, but not limited to, private,
169 broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless
170 services such as microwave backhaul, and the associated site.

171 X. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8),
172 as may be amended, which currently defines that term as equipment that facilitates transmission for
173 any FCC-licensed or authorized wireless communication service, including, but not limited to, radio
174 transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term
175 includes equipment associated with wireless communications services including, but not limited to,

176 private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless
177 services such as microwave backhaul.

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

181 Z. **“Wireless Services”** means any FCC-licensed or authorized wireless communication service
182 transmitted over frequencies in the electromagnetic spectrum.

183 AA. **“Wireless Telecommunications Facility”** means any facility constructed, installed, or operated
184 for wireless service. “Wireless telecommunications facility” includes, but is not limited to, antennas
185 or other types of equipment for the transmission or receipt of such signals, telecommunications
186 towers or similar structures supporting such equipment, related accessory equipment, equipment
187 buildings, parking areas, and other accessory development. “Wireless telecommunications facility”
188 does not mean any of the following:

189 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of
190 the Commission’s Rules, or its successor regulation.

191 2. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R.
192 Section 1.4000, or any successor regulation, including, but not limited to, direct-to-home
193 satellite dishes that are less than one meter in diameter, TV antennas used to receive
194 television broadcast signals and wireless cable antennas.

195 3. Portable radios and devices including, but not limited to, hand-held, vehicular, or other
196 portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency
197 services radio, and other similar portable devices as determined by the zoning
198 administrator.

199 4. Telecommunications facilities owned and operated by any government agency.

200 5. Telecommunications facilities owned and operated by any emergency medical care
201 provider.

202 6. Mobile services providing public information coverage of news events of a temporary
203 nature.

204 7. Any wireless telecommunications facilities exempted from the Fairfax Municipal Code by
205 federal law or state law.

206 **19.04.030 Applicability**

207 A. This chapter applies to all wireless telecommunications facilities as follows:

208 1. All facilities for which applications were not approved prior to the effective date of this
209 chapter shall be subject to and comply with all provisions of this chapter;

210 2. All facilities, notwithstanding the date approved, shall be subject immediately to the
211 provisions of this chapter governing the operation and maintenance, cessation of use and
212 abandonment, removal and restoration of wireless telecommunications facilities and
213 wireless telecommunications collocation facilities and the prohibition of dangerous
214 conditions or obstructions by such facilities; provided, however, that in the event a
215 condition of approval conflicts with a provision of this chapter, the condition of approval
216 shall control unless and until the permit is amended or revoked.

217 B. Title 19, including but not limited to this chapter 19.04 shall not apply to a wireless
218 telecommunications facility on property owned by the Town.

219 C. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions
220 governing the installation of a public utility structure or facility shall not apply to wireless
221 telecommunications facilities. This chapter 19.04 shall govern all applications for wireless
222 telecommunications facilities.

223 **19.04.040 Wireless Telecommunications Facility Permit Required**

224 A. **Permit required.** No wireless telecommunications facility shall be located or modified within
225 the Town on any property, including the public right-of-way, without compliance with this chapter.

226 Excluding Eligible Facilities Request applications, applications for wireless facilities shall require a use
227 permit subject to the requirements of this chapter, to be acted upon by the Planning Commission
228 pursuant to Chapter 17.032, and other permits as set forth in the table below in addition to any other
229 permit required pursuant to the Fairfax Municipal Code.

230

<i>Description Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of Way³</i>
	<i>RS, RD, RM, PDD Residential Zoning Districts</i>	<i>All Other Zoning Districts</i>	<i>Non-Residential Zoning Districts</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	Permitted	Permitted
¹ See requirements of section 19.04.140. ² See requirements of section 19.04.150. ³ For any public right-of-way on the boundary between zoning districts, the zone applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.			

231

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

236 **19.04.050 Application for Permit**

237 A. **Application content.** All applications for a permit required by this chapter must be made in
238 writing on such form as the zoning administrator prescribes. For permit applications other than
239 Eligible Facilities Requests (which are addressed in Section 19.04.140), the form shall include the
240 following information, in addition to all other information determined necessary by the zoning
241 administrator as well as all other information required by the Town as part of an application for a
242 conditional use permit:

- 243 1. Full name and contact information for the facility owner, facility operator, agent (if any),
244 and property owner, and related letter(s) of authorization.
- 245 2. The type of facility, including a full written description of the proposed facility, its purpose,
246 and technical specifications.
- 247 3. A detailed site and engineering plan of the proposed facility containing the exact proposed
248 location of the facility, created by a qualified licensed engineer and in accordance with
249 requirements set by the zoning administrator. The site and engineering plan shall display
250 the dimensions of each proposed facility, including its height from the ground level. The
251 site and engineering plans shall show the proposed facility from each cardinal direction.
- 252 4. Photographs of facility equipment and an accurate visual impact analysis with photo
253 simulations.
- 254 5. Proof of all applicable licenses or other approvals required by the FCC.
- 255 6. A technically sufficient written report certified by a qualified radio frequency emissions
256 engineer, certifying that the facility is in compliance with such FCC standards.
- 257 7. If the application is for a facility that will be located within the public right-of-way, the
258 applicant shall certify that it is a telephone corporation or state the basis for its claimed
259 right to enter the right-of-way, and provide a copy of its certificate of public convenience
260 and necessity (CPCN), if a CPCN has been issued by the California Public Utilities
261 Commission.
- 262 8. A written description identifying the geographic service area for the subject installation,
263 accompanied by a plan and maps showing anticipated future installations and
264 modifications for the following two years.
- 265 9. A written report that analyzes acoustic levels for the proposed wireless
266 telecommunications facility and all associated equipment including without limitation all
267 environmental control units, sump pumps, temporary backup power generators, and
268 permanent backup power generators in order to demonstrate compliance with chapter
269 7.16 (Noise Control). The acoustic analysis must be prepared and certified by an engineer
270 and include an analysis of the manufacturers' specifications for all noise-emitting
271 equipment and a depiction of the proposed equipment relative to all adjacent property
272 lines. In lieu of a written report, the applicant may submit evidence from the equipment
273 manufacturer that the ambient noise emitted from all the proposed equipment will not,
274 both individually and cumulatively, exceed the applicable limits.
- 275 10. If the applicant claims it requires an exception to the requirements of this chapter, all
276 information and studies necessary for the Town to evaluate that claim.
- 277 11. An application and processing fee and a deposit for a consultant review as set forth in
278 paragraph (B) of this section.

279 12. Any other studies or information determined necessary by the zoning administrator may
280 be required.

281 **B. Independent expert.**

282 1. The zoning administrator is authorized to retain on behalf of the Town an independent,
283 qualified consultant to review any application for a permit for a wireless
284 telecommunications facility to review the technical aspects of the application, including
285 but not limited to the following matters:

286 (a) The accuracy, adequacy, and completeness of submissions,

287 (b) Compliance with applicable radio frequency emission standards,

288 (c) Whether any requested exception is necessary to close a significant gap in
289 coverage and is the least intrusive means of doing so,

290 (d) Technical demonstration of the unavailability of alternative sites, facility
291 designs or configurations, and coverage analysis, and

292 (e) The validity of conclusions reached or claims made by applicant.

293 2. The cost of this review shall be paid by the applicant through a deposit pursuant to an
294 adopted fee schedule resolution.

295 **19.04.060 Location and Configuration Preferences**

296 A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the reviewing
297 authority regarding the preferred locations and configurations for wireless telecommunication
298 facilities in the Town , provided that nothing in this section shall be construed to permit a wireless
299 telecommunication facility in any location or configuration that it is otherwise prohibited by this
300 chapter.

301 B. **Review of Location and Configuration.** The reviewing authority shall consider the extent to
302 which a proposed wireless telecommunication facility complies with these preferences and whether
303 there are feasible alternative locations or configurations to the proposed facility that are more
304 preferred under this section.

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

307 1. Collocation with existing facilities,

308 2. Roof-mounted,

309 3. Building-mounted,

- 310 4. Mounted on an existing pole or utility pole
- 311 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole,
- 312 6. Mounted on a new telecommunication tower.
- 313 D. **Order of Preference - Location.** The order of preference for the location of wireless
- 314 telecommunications facilities from most preferred to least preferred is:
- 315 1. In the CH zoning district,
- 316 2. In the CC zoning district,
- 317 3. In the CS zoning district,
- 318 4. In the CL zoning district,
- 319 5. In the CR zoning district,
- 320 6. In the PD zoning district,
- 321 7. In the public right-of-way with the closest adjacent district being a commercial district.
- 322 E. **Accessory equipment.** In order of preference from most preferred to least preferred,
- 323 accessory equipment for wireless telecommunication facilities and wireless telecommunications
- 324 collocation facilities shall where possible be located underground, within a building or structure, on a
- 325 screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties
- 326 and the roadway, unless the reviewing authority finds that another location is preferable under the
- 327 circumstances of the application.
- 328 **19.04.070 Design and Development Standards for All Facilities**
- 329 A. **Basic requirements.** The design and development standards set forth in this section apply to
- 330 all wireless telecommunications facilities no matter where they are located. Wireless
- 331 telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and
- 332 other impacts on the surrounding community and shall be planned, designed, located, and erected in
- 333 accordance with the design and development standards in this section.
- 334 B. **No speculative facilities.** A wireless telecommunications facility, wireless telecommunications
- 335 collocation facility, or a telecommunications tower, which is built on speculation and for which there
- 336 is no wireless tenant is prohibited within the Town .
- 337 C. **General guidelines.** The applicant shall employ screening and camouflage design techniques
- 338 in the design and placement of wireless telecommunications facilities in order to ensure that the
- 339 facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding
- 340 area and to hide the facility from predominant views from surrounding properties, all in a manner

341 that achieves compatibility with the community.

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

344 E. **Antennas.** The applicant shall use the least visible antennas possible to accomplish the
345 coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All
346 antenna mounts shall be designed so as not to preclude possible future collocation by the same or
347 other operators or carriers. Antennas shall be situated as to reduce visual impact without
348 compromising their function. Whip antennas need not be screened.

349 F. **Landscaping.** Where appropriate, facilities shall be installed so as to maintain and enhance
350 existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for
351 screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation
352 is deemed necessary by the Town to provide screening or to block the line of sight between facilities
353 and adjacent uses.

354 G. **Signage.** Wireless telecommunications facilities and wireless telecommunications collocation
355 facilities shall not bear any signs or advertising devices other than certification, warning or other
356 signage required by law or permitted by the Town .

357 H. **Lighting.** No wireless telecommunications facility may be illuminated unless either specifically
358 required by the Federal Aviation Administration or other government agency or in association with
359 the illumination of an athletic field on Town or school property. Lightning arresters and beacon lights
360 are not permitted unless required by the Federal Aviation Administration or other government
361 agency. Legally required lightning arresters and beacons shall be included when calculating the height
362 of facilities such as telecommunications towers, lattice towers, and poles.

363 I. **Noise.**

364 1. Each wireless telecommunications facility and wireless telecommunications collocation
365 facility shall be operated in such a manner so as to minimize any possible disruption caused
366 by noise.

367 2. Backup generators shall only be operated during periods of power outages, and shall not
368 be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

369 3. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA
370 at the facility's property line if the facility is located in a business or commercial zone that
371 permits those uses, provided, however, that for any such facility located within 500 feet of
372 any property zoned residential or improved with a residential use, such equipment noise
373 shall not exceed an exterior noise level of 40 dBA at the property line of any such
374 residential property. For any facility located within a residential zone, such equipment
375 noise shall at no time be audible at the property line of any residentially improved or
376 residential zoned property.

4. Any equipment, including but not limited to air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the Fairfax Municipal Code.

J. **Security.** Each wireless telecommunications facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance.

K. **Modification.** At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

19.04.080 Additional Design and Development Standards for Facilities Outside the Public Right-of-Way

A. **Basic Requirements.** Facilities located outside the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.

B. **No parking interference.** In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.

C. **Roof-mounted facilities.** Roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor alter the character of the structure.

D. **Facilities mounted to a telecommunications tower.** Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the Town .

1. Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet FCC requirements. The applicant shall provide documentation satisfactory to the zoning administrator establishing compliance with this paragraph. In any event, facilities mounted to a

414 telecommunications tower shall not exceed the applicable height limit for structures in the
415 applicable zoning district.

416 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including,
417 but not limited to, electrical and utility cables, shall be run within the interior of the
418 telecommunications tower and shall be camouflaged or hidden to the fullest extent
419 feasible without jeopardizing the physical integrity of the tower.

420 3. Pole installations shall be situated so as to utilize existing natural or man-made features
421 including topography, vegetation, buildings, or other structures to provide the greatest
422 amount of visual screening.

423 4. All antenna components and accessory wireless equipment shall be treated with exterior
424 coatings of a color and texture to match the predominant visual background or existing
425 architectural elements so as to visually blend in with the surrounding development.
426 Subdued colors and non-reflective materials that blend with surrounding materials and
427 colors shall be used.

428 5. Poles shall be no greater in diameter or other cross-sectional dimensions than is necessary
429 for the proper functioning of the facility.

430 6. If a faux tree is proposed for the Pole installation, it shall be of a type of tree compatible
431 with those existing in the immediate areas of the installation. If no trees exist within the
432 immediate areas, the applicant shall create a landscape setting that integrates the faux
433 tree with added species of a similar height and type. Additional camouflage of the faux
434 tree may be required depending on the type and design of faux tree proposed.

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

439 1. Accessory equipment for roof-mounted facilities shall be installed inside the building to
440 which it is mounted or underground, if feasible. If not feasible, such accessory equipment
441 may be located on the roof of the building that the facility is mounted on, provided that
442 both the equipment and screening materials are painted the color of the building, roof, or
443 surroundings. All screening materials for roof-mounted facilities shall be of a quality and
444 design that is architecturally integrated with the design of the building or structure.

445 2. Accessory equipment for facilities mounted to a telecommunications tower shall be
446 visually screened by locating the equipment either within a nearby building, in an
447 underground vault (with the exception of required electrical panels) or in another type of
448 enclosed structure, which shall comply with the development and design standards of the
449 zoning district in which the accessory equipment is located. Such enclosed structure shall
450 be architecturally treated and adequately screened from view by landscape plantings,

451 decorative walls, fencing or other appropriate means, selected so that the resulting
452 screening will be visually integrated with the architecture and landscaping of the
453 surroundings.

454 **19.04.090 Additional Design and Development Standards for Facilities in the Public Right-of-Way**

455 A. **Basic Requirements.** Facilities located in the public right-of-way are subject to the design and
456 development standards set forth in this section in addition to all design and development standards
457 that apply to all facilities.

458 B. **Right-of-way authority.** An encroachment permit must be obtained for any work in the public
459 right of way. Only applicants authorized to enter the public right-of-way pursuant to state or federal
460 law or a franchise or other agreement with the Town shall be eligible for a permit to install or modify
461 a wireless telecommunications facility in the public right-of-way.

462 C. **Antennas.**

463 1. *Utility poles.* The maximum height of any antenna mounted to an existing utility pole shall
464 not exceed two (2) feet above the height of an existing utility pole, nor shall any portion of
465 the antenna or equipment mounted on a pole be less than eighteen (18) feet above any
466 drivable road surface. Notwithstanding the foregoing, all installations on utility poles shall
467 fully comply with the California Public Utilities Commission general orders, including, but
468 not limited to, General Order 95, as revised.

469 2. *Street light poles.* The maximum height of any antenna mounted to a street light pole shall
470 not exceed seven (7) feet above the existing height of a street light pole in a location with
471 its closest adjacent district being a commercial zoning district and shall not exceed three
472 (3) feet above the existing height of a street light pole in any other zoning district. Any
473 portion of the antenna or equipment mounted on such a pole shall be no less than
474 eighteen (18) feet above any drivable road surface.

475 D. **Poles.**

476 1. Only pole-mounted antennas shall be permitted in the public right-of-way. All other
477 telecommunications towers are prohibited, and no new poles are permitted that are not
478 replacing an existing pole.

479 2. Pole height and width limitations:

480 (a) All replacement poles shall be designed to be the minimum functional height
481 and width required to support the proposed antenna installation and meet FCC
482 and CPUC requirements. Replacement poles and antennas and similar
483 structures shall be no greater in diameter or other cross-sectional dimensions
484 than is necessary for the proper functioning of the facility.

485 (b) Notwithstanding the above, no facility shall be located on a pole that is less

486 than 20 feet in height and no facility shall exceed thirty-five (35) feet in height
487 as measured from the ground, including, but not limited to the pole or
488 replacement pole and any antenna that protrudes above the pole or
489 replacement pole.

490 (c) Pole mounted equipment shall not exceed six cubic feet in dimension.

491 3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole
492 shall match the appearance of the original pole to the extent feasible, unless another
493 design better accomplishes the objectives of this section. Such replacement pole shall not
494 exceed the height of the pole it is replacing by more than seven (7) feet and no facility shall
495 exceed thirty-five (35) feet in height as measured from the ground.

496 4. If an exception is granted for placement of new poles in the public right-of-way, new poles
497 shall be designed to resemble existing poles in the public right-of-way, including size,
498 height, color, materials and style, with the exception of any existing pole designs that are
499 scheduled to be removed and not replaced, unless another design better accomplishes the
500 objectives of this section. Such new poles that are not replacement poles shall be located
501 no closer than ninety (90) feet to an existing pole.

502 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in the public
503 right-of-way that is technically feasible.

504 F. **Location.**

505 1. Each component part of a facility shall be located so as not to cause any physical or visual
506 obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the
507 right-of-way, or safety hazards to pedestrians and motorists.

508 2. A facility shall not be located within any portion of the public right-of-way interfering with
509 access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve
510 housing structures, or any other vital public health and safety facility.

511 3. Facilities mounted to a telecommunications tower, above-ground accessory equipment,
512 or walls, fences, landscaping or other screening methods shall be setback a minimum of
513 18 inches from the front of a curb.

514 4. Each pole mounted wireless telecommunications facility must be separated by at least
515 1,500 feet.

516 5. All cables, including, but not limited to, electrical and utility cables, between the pole and
517 any accessory equipment shall be placed underground, if feasible.

518 6. All new wires needed to service the wireless telecommunications facility must be installed
519 within the width of the existing utility pole so as to not exceed the diameter and height of
520 the existing utility pole.

521 G. **Americans with Disabilities Act Compliance.** All facilities shall be built in compliance with the
522 Americans with Disabilities Act (ADA).

523 H. **Accessory equipment.** The wireless facility shall be powered using unmetered service,
524 whenever available. If not available, the electric meter shall be pole-mounted to the extent feasible,
525 and all accessory equipment shall be located underground to the extent feasible. When above-ground
526 is the only feasible location for a particular type of accessory equipment and when such accessory
527 equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure,
528 and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall
529 be screened and camouflaged to the fullest extent possible, including the use of landscaping or
530 alternate screening. Required electrical meter cabinets shall be adequately screened and
531 camouflaged.

532 I. **Documentation.** The applicant shall provide documentation satisfactory to the zoning
533 administrator establishing compliance with this section.

534 **19.04.100 Conditions of Approval for All Facilities**

535 A. In addition to compliance with the requirements of this chapter, upon approval all facilities
536 shall be subject to each of the following conditions of approval, as well as any modification of these
537 conditions or additional conditions of approval deemed necessary by the reviewing authority:

538 1. Before the permittee submits any application for a permit or other permits required by
539 the Fairfax Municipal Code, the permittee must incorporate the wireless
540 telecommunication facility permit granted under this chapter, all conditions associated
541 with the wireless telecommunications facility permit and the approved plans and any
542 photo simulations (the "Approved Plans") into the project plans. The permittee must
543 construct, install and operate the wireless telecommunications facility in strict compliance
544 with the Approved Plans. The permittee shall submit an as built drawing within 90 days
545 after installation of the facility.

546 2. Where feasible, as new technology becomes available, the permittee shall:

547 (a) place above-ground wireless telecommunications facilities below ground,
548 including, but not limited to, accessory equipment that has been mounted to a
549 telecommunications tower or mounted on the ground; and

550 (b) replace larger, more visually intrusive facilities with smaller, less visually
551 intrusive facilities, after receiving all necessary permits and approvals required
552 pursuant to the Fairfax Municipal Code.

553 3. The permittee shall submit and maintain current at all times basic contact and site
554 information, in a form as may be required by the Town . The permittee shall notify the
555 Town of any changes to the information submitted within seven (7) days of any change,

556 including change of the name or legal status of the owner or operator. This information
557 shall include, but is not limited to, the following:

558 (a) Identity, including the name, address and 24-hour local or toll free contact
559 phone number of the permittee, the owner, the operator, and the agent or
560 person responsible for the maintenance of the facility.

561 (b) The legal status of the owner of the wireless telecommunications facility,
562 including official identification numbers and FCC certification.

563 (c) Name, address, and telephone number of the property owner if different than
564 the permittee.

565 4. The permittee shall not place any facilities that will deny access to, or otherwise interfere
566 with, any public utility, easement, or right-of-way located on the site. The permittee shall
567 allow the Town reasonable access to, and maintenance of, all utilities and existing public
568 improvements within or adjacent to the site, including, but not limited to, pavement, trees,
569 public utilities, lighting and public signage.

570 5. At all times, all required notices and signs shall be posted on the site as required by the
571 FCC and California Public Utilities Commission, and as approved by the Town . The location
572 and dimensions of a sign bearing the emergency contact name and telephone number shall
573 be posted pursuant to the approved plans.

574 6. At all times, the permittee shall ensure that the facility complies with the most current
575 regulatory and operational standards including, but not limited to, radio frequency
576 emissions standards adopted by the FCC and antenna height standards adopted by the
577 Federal Aviation Administration. The Town shall retain a consultant, at the sole expense of
578 the permittee, to perform testing demonstrating compliance with current regulatory and
579 operational standards. Tests shall occur upon commencement of operations and annually
580 thereafter.

581 7. If the zoning administrator determines there is good cause to believe that the facility may
582 emit radio frequency emissions that are likely to exceed FCC standards, the zoning
583 administrator may require the permittee to submit a technically sufficient written report
584 certified by a qualified radio frequency emissions engineer, certifying that the facility is in
585 compliance with such FCC standards.

586 8. Permittee shall pay for and provide a performance bond, which shall be in effect until the
587 facilities are fully and completely removed and the site reasonably returned to its original
588 condition, to cover permittee's obligations under these conditions of approval and the
589 Fairfax Municipal Code. The bond coverage shall include, but not be limited to, removal
590 of the facility, maintenance obligations and landscaping obligations. The amount of the
591 performance bond shall be set by the zoning administrator in an amount rationally related
592 to the obligations covered by the bond and shall be specified in the conditions of approval.

9. Permittee shall defend, indemnify, protect and hold harmless the Town , its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the Town and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the Town , Planning Commission or Town Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The Town shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit Town from participating in a defense of any claim, action or proceeding. The Town shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.
10. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.
11. A condition setting forth the permit expiration date in accordance with section 19.04.20 shall be included in the conditions of approval.

19.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way

A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in section 19.04.100, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the Town Manager or his/her designee for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian (e.g., ADA) and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it. The Town may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the Town by the permittee.
2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the Town shall be moved to accommodate a wireless telecommunications facility unless the Town determines that such movement will not adversely affect the Town or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the Town 's structure, improvement or property. Prior to

commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the Town with documentation establishing to the Town 's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

3. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

4. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to Town streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the zoning administrator, the zoning administrator shall cause such repair to be completed at permittee's sole cost and expense.

5. Prior to issuance of a building permit, the applicant shall obtain the zoning administrator's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten (10)-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten (10) feet may be required by the zoning administrator.

6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within thirty (30) days of such service being offered and reasonably restore the area to its prior condition.

7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to Town , if and when made necessary by:

a) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by Town or any other public agency;

b) Any abandonment of any street, sidewalk, or other public facility;

c) Any change of grade, alignment or width of any street, sidewalk or other public facility;

669 or
670 d) A determination by the zoning administrator that the wireless telecommunications
671 facility has become incompatible with public health, safety or welfare or the public's
672 use of the public right-of-way.

673 8. Any modification, removal, or relocation of the facility shall be completed within ninety
674 (90) days of written notification by Town unless exigencies dictate a shorter period for
675 removal or relocation. Modification or relocation of the facility shall require submittal,
676 review and approval of a permit amendment pursuant to the Fairfax Municipal Code. The
677 permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid
678 for the original permit or to a new permit, without additional fee, at a location as close to
679 the original location as the standards set forth in the Fairfax Municipal Code allow. In the
680 event the facility is not modified, removed, or relocated within said period of time, the
681 Town may cause the same to be done at the sole cost and expense of permittee. Further,
682 due to exigent circumstances as provided in the Fairfax Municipal Code, the Town may
683 modify, remove, or relocate wireless telecommunications facilities without prior notice to
684 permittee provided permittee is notified within a reasonable period thereafter.

685 **19.04.120 Findings – Conditional Use Permit**

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

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

699 B. In addition to the findings in paragraph (A) above, approval of a wireless telecommunications
700 facility permit for a facility that will be located in the public right-of-way may be granted only if the
701 following findings are made by the reviewing authority:

- 702 1. The applicant has provided substantial written evidence supporting the applicant's claim
703 that it has the right to enter the public right-of-way pursuant to state or federal law, or the

704 applicant has entered into a franchise or other agreement with the Town permitting them
705 to use the public right-of-way.

706 2. The applicant has demonstrated that the facility will not interfere with the use of the public
707 right-of-way, existing subterranean infrastructure, or the Town's plans for modification or
708 use of such location and infrastructure.

709 **19.04.130 Exceptions**

710 A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions
711 from findings that would otherwise justify denial, may be granted by the reviewing authority if the
712 reviewing authority makes the finding that:

713 1. Denial of the facility as proposed would violate federal law, state law, or both; or

714 2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights
715 under federal law, state law, or both.

716 B. An applicant may only request an exception at the time of applying for a wireless
717 telecommunications facility permit. The request must include both the specific provision(s) of this
718 chapter from which the exception is sought and the basis of the request. Any request for an exception
719 after the Town has deemed an application complete shall be treated as a new application.

720 C. Notwithstanding any other provision of this chapter, a conditional use permit shall be required
721 for a facility when an exception is requested.

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

728 **19.04.140 Eligible Facilities Requests**

729 A. **Applicability.** This Section applies to all Eligible Facilities Requests pursuant to Section 6409(a).

730 B. **Approval Required.** Any Eligible Facilities Request submitted with a written request for a
731 6409(a) approval shall be subject to the zoning administrator's approval, conditional approval or
732 denial without prejudice pursuant to the standards and procedures contained in this chapter.

733 C. **Other Regulatory Approvals.** Any section 6409(a) approval granted under this chapter shall
734 remain subject to any and all lawful conditions or requirements associated with such other permits
735 or regulatory approvals from the Town and state or federal agencies.

736 D. **Eligible Facilities Request Application Requirement.** The Town shall not approve any Eligible

Facilities Request subject to this chapter except upon a duly filed application consistent with this Section and any other written rules the Town or the zoning administrator may establish from time to time. An application must include the following information:

1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
2. The type of facility, including a full written description of the proposed facility, its purpose, and technical specifications.
3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the zoning administrator. The site and engineering plan shall display the dimensions of each proposed facility, including its height from the ground level. The site and engineering plans shall show the proposed facility from each cardinal direction.
4. Photographs of facility equipment and an accurate visual impact analysis with photo simulations.
5. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the Town to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance. The analysis provided under (ii) shall include a copy of all prior conditions of approval, and an explanation as to why the prior conditions of approval are met by the proposed wireless facility application.
6. A technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.

E. Procedures for a Duly Filed Eligible Facilities Request Application.

1. *Voluntary Pre-Submittal Conference.* Before application submittal, applicants are encouraged (but not required) to schedule and attend a pre-application meeting with the zoning administrator for all proposed modifications submitted for approval pursuant to Section 6409(a). A pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project

774 classification, including whether the project qualifies for Section 6409(a); potential
775 concealment issues (if applicable); coordination with other Town departments responsible
776 for application review; and application completeness issues. To mitigate unnecessary
777 delays due to application incompleteness, applicants are encouraged (but not required) to
778 bring any draft applications or other materials so that Town staff may provide informal
779 feedback about whether such applications or other materials may be incomplete or
780 unacceptable.

781 2. *Submittal Appointment.* All Eligible Facilities Request Applications must be filed with the
782 Town at a pre-scheduled appointment with the zoning administrator or his/her designee.
783 Applicants may generally submit one (1) application per appointment, but may schedule
784 successive appointments for multiple applications whenever feasible. Any application
785 received without an appointment, whether delivered in-person or through any other
786 means, will not be considered duly filed unless the applicant received a written exemption
787 from the zoning administrator at a pre-submittal conference.

788 3. *Appointment Scheduling Procedures.* For any event in the submittal process that requires
789 an appointment, applicants must submit a written request to the zoning administrator. .

790 4. *Applications Deemed Denied.* To promote efficient review and timely decisions, the Town
791 may deem an application denied without prejudice to the applicant to re-file as a new
792 application when the applicant fails to tender a substantive response to the Town within
793 90 calendar days after the Town deems the application incomplete in a written notice to
794 the applicant.

795 5. *Departmental Forms, Rules and Other Regulations.* The Town council authorizes the zoning
796 administrator to develop and publish permit application forms, checklists, informational
797 handouts and other related materials that the zoning administrator finds necessary,
798 appropriate or useful for processing requests for section 6409(a) approvals. Without
799 further authorization from the Town council, the zoning administrator may from time-to-
800 time update and alter any such permit application forms, checklists, informational
801 handouts and other related materials as the zoning administrator deems necessary,
802 appropriate or useful to respond to regulatory, technological or other changes related to
803 this chapter. The Town council authorizes the zoning administrator to establish other
804 reasonable rules and regulations, which may include without limitation regular hours for
805 appointments with applicants, as the zoning administrator deems necessary or
806 appropriate to organize, document and manage the application intake process.

807 F. **Administrative Review; Decision Notices.** The zoning administrator shall administratively review
808 an application for an Eligible Facilities Request Application and act on such an application without
809 prior notice or a public hearing. Within five (5) working days after the zoning administrator
810 conditionally approves or denies an Eligible Facilities Request Application, the zoning
811 administrator shall send a written notice to the applicant. In the event that the zoning
812 administrator determines that an application submitted for approval pursuant to Section 6409(a)
813 does not qualify for approval, the zoning administrator will send written notice to the applicant

that includes the reasons to support the review authority's decision and states that the application will be denied without prejudice.

G. **Required Findings for 6409(a) Approval.** The zoning administrator may approve or conditionally approve an application submitted for Section 6409(a) approval when the zoning administrator finds that the proposed project:

1. Qualifies as an Eligible Facilities Request; and

2. Complies with (or is conditioned to comply with) all generally applicable health and safety rules.

H. **Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the zoning administrator may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project does not meet the criteria under subsection (G) above.

I. **Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the Town 's authority to conditionally approve an application for a section 6409(a) approval to protect and promote the public health, safety and welfare.

J. **Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary, including but not limited to section , an applicant may appeal a decision by the zoning administrator to deny without prejudice a Section 6409(a) application. The appeal must be filed within three (3) days from the zoning administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Manager shall serve as the appellate authority for all such an appeal. The Town shall provide notice for an administrative hearing by the Town Manager. The Town Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (G) and (H) of this section. The decision of the Town Manager shall be final and not subject to any further administrative appeals.

K. **Standard Conditions of Approval.** In addition to all other conditions adopted by the zoning administrator, all Section 6409(a) approvals, whether approved by the zoning administrator or deemed approved by the operation of law, shall be automatically subject to the following conditions in this Section; provided, however, that the zoning administrator shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:

1. *Approved Plans.* Before the permittee submits any application for a building permit or other permits required by the Fairfax Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict

- 851 compliance with the Approved Plans. The permittee shall submit an as built drawing within
852 ninety (90) days after installation of the facility.
- 853 2. *Permit Term.* The Town 's grant or grant by operation of law of a Section 6409(a) approval
854 will not extend the permit term, if any, for any conditional use permit, or other underlying
855 prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall
856 be coterminous with the underlying permit or other prior regulatory authorization for the
857 subject tower or base station.
- 858 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of competent
859 jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets
860 Section 6409(a) such that federal law would not mandate approval for any Section 6409(a)
861 approval, such 6409(a) approvals shall automatically expire one year from the effective
862 date of the judicial order, unless the decision would not authorize accelerated termination
863 of previously approved section 6409(a) approvals or the zoning administrator grants an
864 extension upon written request from the permittee that shows good cause for the
865 extension, which includes without limitation extreme financial hardship. Notwithstanding
866 anything in the previous sentence to the contrary, the zoning administrator may not grant
867 a permanent exemption or indefinite extension. A permittee shall not be required to
868 remove its improvements approved under the invalidated section 6409(a) approval when
869 it has submitted an application for a conditional use permit for those improvements before
870 the one-year period ends.
- 871 4. *No Waiver of Standing.* The Town 's grant or grant by operation of law of a Section 6409(a)
872 approval does not waive, and shall not be construed to waive, any standing by the Town
873 to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any section
874 6409(a) approval.
- 875 5. *Build-out Period.* The section 6409(a) approval will automatically expire one year from the
876 issuance date unless the permittee obtains all other permits and approvals required to
877 install, construct and operate the approved wireless facility, which includes without
878 limitation any permits or approvals required by the any federal, state or local public
879 agencies with jurisdiction over the subject property, the wireless facility or its use. The
880 zoning administrator may grant one (1) written extension to a date certain when the
881 permittee shows good cause to extend the limitations period in a written request for an
882 extension submitted at least 30 days prior to the automatic expiration date in this
883 condition. Any further extensions may be granted by the planning commission.
- 884 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which includes
885 without limitation any and all improvements, equipment, structures, access routes, fences
886 and landscape features, in a neat, clean and safe condition in accordance with the
887 Approved Plans and all conditions in this section 6409(a) approval. The permittee shall
888 keep the site area free from all litter and debris at all times. The permittee, at no cost to
889 the Town , shall remove and remediate any graffiti or other vandalism at the site within 48

890 hours after the permittee receives notice or otherwise becomes aware that such graffiti or
891 other vandalism occurred.

892 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all
893 federal, state and local statutes, regulations, orders or other rules that carry the force of
894 law ("Laws") applicable to the permittee, the subject property, the wireless facility or any
895 use or activities in connection with the use authorized in this section 6409(a) approval. The
896 permittee expressly acknowledges and agrees that this obligation is intended to be broadly
897 construed and that no other specific requirements in these conditions are intended to
898 reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance
899 with all Laws.

900 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to
901 avoid any and all undue or unnecessary adverse impacts on nearby properties that may
902 arise from the permittee's construction, installation, operation, modification,
903 maintenance, repair, removal or other activities at the site. The permittee shall not
904 perform or cause others to perform any construction, installation, operation, modification,
905 maintenance, repair, removal or other work that involves heavy equipment or machines
906 on any day and at any time prohibited under the Fairfax Municipal Code. The restricted
907 work hours in this condition will not prohibit any work required to prevent an actual,
908 immediate harm to property or persons, or any work during an emergency declared by the
909 Town . The zoning administrator may issue a stop work order for any work that violates
910 this condition.

911 9. *Noise Complaints.* The permittee shall conduct all activities on the site in compliance with
912 the noise standards in the Fairfax Municipal Code. In the event that any person files a noise
913 complaint and the Town verifies that such complaint is valid, the permittee must remedy
914 the violation within ten (10) days after notice from the Town , which may include a
915 demonstration that the permittee has amended its operational guidelines in situations
916 where the violation arises from the permittee's personnel rather than the permittee's
917 equipment.

918 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that the
919 Town or its designee may enter onto the site and inspect the improvements and
920 equipment upon reasonable prior notice to the permittee; provided, however, that the
921 Town or its designee may, but will not be obligated to, enter onto the site area without
922 prior notice to support, repair, disable or remove any improvements or equipment in
923 emergencies or when such improvements or equipment threatens actual, imminent harm
924 to property or persons. The permittee will be permitted to supervise the Town or its
925 designee while such inspection or emergency access occurs.

926 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-to-date
927 contact information for a person responsible for the wireless facility, which includes
928 without limitation such person's full name, title, direct telephone number, facsimile

number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.

12. *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the Town, its agents, officers, officials, employees and volunteers from any and all (1) 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 Town or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the Town's approval of this section 6409(a) approval, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409(a) approval or the wireless facility. In the event the Town becomes aware any Claims, the Town will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner or permittee (as applicable) shall promptly reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the Town to approve this section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409(a) approval.

13. *Performance Bond.* Before the Town issues any construction permit in connection with the wireless facility, if in the Town's sole discretion the existing performance bond for the facility is inadequate or the facility is not associated with any existing performance bond, the permittee shall post a performance bond from a surety and in a form acceptable to the Town manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Town manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

14. *Record Retention.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations

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

15. *Compliance Obligations.* An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Fairfax Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the Town to timely notice, prompt or enforce compliance by the applicant or permittee.

19.04.150 Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6

A. **Purpose.** The purpose of this section is to comply with an application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6, for which a 6409(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.

B. **Definitions.** For the purposes of this section, the following terms are defined as follows:

1. **"Collocation Facility"** means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.
2. **"Wireless Telecommunications Facility"** means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.
3. **"Wireless Telecommunications Collocation Facility"** means a wireless telecommunications facility that includes collocation facilities.

C. **Procedures.** An application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6 shall be processed in the same manner as an application for 6409(a) approval is processed, except that where the process requires justification for the 6409(a) approval, the applicant shall instead provide the justification for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6.

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

1006 facility:

1007 1. The applicant for a wireless telecommunications collocation facility permit shall describe
1008 or depict:

1009 (a) The wireless telecommunications collocation facility as it will be initially built;
1010 and

1011 (b) All collocations at full build-out, including, but not limited to, all antennas,
1012 antenna support structures, and accessory equipment.

1013 2. Any collocation shall use screening methods substantially similar to those used on the
1014 existing wireless telecommunications facilities unless other optional screening methods
1015 are specified in the conditions of approval.

1016 3. A wireless telecommunications collocation facility permit shall not be approved unless an
1017 environmental impact report, negative declaration, or mitigated negative declaration was
1018 prepared and approved for the wireless telecommunications collocation facility.

1019 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent collocation
1020 on a wireless telecommunications collocation facility shall be a permitted use only if all of the
1021 following requirements are satisfied:

1022 1. The wireless telecommunications collocation facility:

1023 (a) Was approved after January 1, 2007, by discretionary permit;

1024 (b) Was approved subject to an environmental impact report, negative
1025 declaration, or mitigated negative declaration; and

1026 (c) Otherwise complies with the requirements of California Government Code
1027 Section 65850.6(b), or its successor provision, for addition of a collocation
1028 facility to a wireless telecommunications collocation facility, including, but not
1029 limited to, compliance with all performance and maintenance requirements,
1030 regulations and standards in this chapter and the conditions of approval in the
1031 wireless telecommunications collocation facility permit; and

1032 2. The collocations were specifically considered when the relevant environmental document
1033 was prepared for the wireless telecommunications collocation facility.

1034 3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-
1035 discretionary permits, as required pursuant to the Fairfax Municipal Code.

1036 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or amended
1037 permit shall be required when the facility is modified other than by collocation in accordance with
1038 this section, or the proposed collocation:

1039 1. Increases the height of the existing permitted telecommunications tower or otherwise
1040 changes the bulk, size, location, or any other physical attributes of the existing permitted
1041 wireless telecommunications collocation facility unless specifically permitted under the
1042 conditions of approval applicable to such wireless telecommunications collocation facility;
1043 or

1044 2. Adds any microwave dish or other antenna not expressly permitted to be included in a
1045 collocation facility by the conditions of approval.

1046 G. **Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary,
1047 including but not limited to Chapter 17.036, any applicant may appeal a decision by the zoning
1048 administrator. The appeal must be filed within 10 days from the zoning administrator's decision. The
1049 appeal must state in plain terms the grounds for reversal and the facts that support those grounds.
1050 The Town Manager shall serve as the appellate authority for all appeals of all actions of the zoning
1051 administrator taken pursuant to this section. The Town shall provide notice for an administrative
1052 hearing by the Town Manager. The Town Manager shall limit its review to whether the project should
1053 be approved or denied in accordance with the provisions in this section. The decision of the Town
1054 Manager shall be final and not subject to any further administrative appeals.

1055 **19.04.160 Business License**

1056 A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise
1057 required under the Fairfax Municipal Code.

1058 **19.04.170 Emergency Deployment**

1059 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
1060 conditions that the zoning administrator deems to constitute an emergency, the zoning administrator
1061 may approve the installation and operation of a temporary wireless telecommunications facility (e.g.,
1062 a cell on wheels or "COW"), which is subject to such reasonable conditions that the zoning
1063 administrator deems necessary.

1064 **19.04.180 Operation and Maintenance Standards**

1065 A. All wireless telecommunications facilities must comply at all times with the following
1066 operation and maintenance standards. All necessary repairs and restoration shall be completed by
1067 the permittee, owner, or operator within 48 hours:

1068 1. After discovery of the need by the permittee, owner, operator or any designated
1069 maintenance agent; or

1070 2. After permittee, owner, operator, or any designated maintenance agent receives
1071 notification from a resident or the zoning administrator.

1072 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1073 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility

1074 site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1075 1. General dirt and grease;

1076 2. Chipped, faded, peeling, and cracked paint;

1077 3. Rust and corrosion;

1078 4. Cracks, dents, and discoloration;

1079 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1080 6. Graffiti, bills, stickers, advertisements, litter and debris;

1081 7. Broken and misshapen structural parts; and

1082 8. Any damage from any cause.

1083 C. All trees, foliage or other landscaping elements approved as part of the facility shall be

1084 maintained in good condition at all times, and the permittee, owner and operator of the facility shall

1085 be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any

1086 approved landscaping plan may be made until it is submitted to and approved by the zoning

1087 administrator.

1088 D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance

1089 or repair is not sufficient to return the facility to the condition it was in at the time of installation.

1090 E. Each facility shall be operated and maintained at all times in compliance with applicable

1091 federal regulations, including FCC radio frequency emissions standards.

1092 F. Each facility shall be operated and maintained to comply at all times with the noise regulations

1093 of this chapter and shall be operated and maintained in a manner that will minimize noise impacts to

1094 surrounding residents. Except for emergency repairs, any testing and maintenance activities that will

1095 be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on

1096 Monday through Friday, excluding holidays, unless alternative hours are approved by the zoning

1097 administrator. Backup generators, if permitted, shall only be operated during periods of power

1098 outages or for testing.

1099 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be

1100 flown and shall be properly maintained at all times.

1101 H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with

1102 the standards set forth in this section and the conditions of approval.

1103 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

1104 No person shall install, use or maintain any wireless telecommunications facility which in whole or in
1105 part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance
1106 endangers or is reasonably likely to endanger the safety of persons or property, or when such site or
1107 location is used for public utility purposes, public transportation purposes or other governmental use,
1108 or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular
1109 traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence
1110 or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted
1111 sidewalk dining, permitted street furniture or other objects permitted at or near said location.

1112 **19.04.200 Permit Expiration**

1113 A. A permit for any wireless telecommunications facility shall be valid for a period of ten (10)
1114 years, unless the Planning Commission authorizes a longer period or pursuant to another provision of
1115 the Fairfax Municipal Code the permit lapses sooner or is revoked. At the end of such period, the
1116 permit shall expire.

1117 B. A permittee may apply for extensions of its permit in increments of no more than ten years
1118 and no sooner than twelve months prior to expiration of the permit.

1119 C. If a permit has not expired at the time an application is made for an extension, the zoning
1120 administrator may administratively extend the term of the permit for subsequent ten-year terms
1121 upon verification of continued compliance with the findings and conditions of approval under which
1122 the application was originally approved, as well as any other applicable provisions of the Fairfax
1123 Municipal Code that are in effect at the time the permit extension is granted.

1124 1. At the zoning administrator's discretion, additional studies and information may be
1125 required of the applicant.

1126 2. If the zoning administrator determines that the facility is nonconforming or that additional
1127 conditions of approval are necessary to bring the facility into compliance with the
1128 provisions of the Fairfax Municipal Code that are then in effect at the time of permit
1129 expiration, the zoning administrator shall refer the extension request to the Planning
1130 commission.

1131 D. The request for an extension shall be decided by the Planning commission if the permit expired
1132 before the application is made for an extension or if the zoning administrator refers the matter to the
1133 Planning commission. After notice and a public hearing, the Planning commission may approve,
1134 conditionally approve, or deny the extension.

1135 **19.04.210 Cessation of Use or Abandonment**

1136 A. A wireless telecommunications facility is considered abandoned and shall be promptly
1137 removed as provided herein if it ceases to provide wireless telecommunications services for ninety
1138 (90) or more consecutive days. If there are two or more users of a single facility, then this provision

1139 shall not become effective until all users cease using the facility.

1140 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease use
1141 of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing
1142 or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall
1143 provide written notice to the zoning administrator of any discontinuation of operations of 30 days or
1144 more.

1145 C. Failure to inform the zoning administrator of cessation or discontinuation of operations of any
1146 existing facility as required by this section shall constitute a violation of any approvals and be grounds
1147 for:

1148 1. Prosecution;

1149 2. Revocation or modification of the permit;

1150 3. Calling of any bond or other assurance required by this chapter or conditions of approval
1151 of the permit;

1152 4. Removal of the facilities by the Town in accordance with the procedures established under
1153 the Fairfax Municipal Code for abatement of a public nuisance at the owner's expense; and

1154 5. Any other remedies permitted under the Fairfax Municipal Code.

1155 **19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1156 A. **Permittee's removal obligation.** Upon the expiration date of the permit, including any
1157 extensions, earlier termination or revocation of the permit or abandonment of the facility, the
1158 permittee, owner or operator shall remove its wireless telecommunications facility and restore the
1159 site to its natural condition except for retaining the landscaping improvements and any other
1160 improvements at the discretion of the Town . Removal shall be in accordance with proper health and
1161 safety requirements and all ordinances, rules, and regulations of the Town . The facility shall be
1162 removed from the property within 30 days, at no cost or expense to the Town . If the facility is located
1163 on private property, the private property owner shall also be independently responsible for the
1164 expense of timely removal and restoration.

1165 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its facility
1166 and restore the property within 30 days after expiration, earlier termination, or revocation of the
1167 permit, or abandonment of the facility, shall be a violation of the Fairfax Municipal Code, and be
1168 grounds for:

1169 1. Prosecution;

1170 2. Calling of any bond or other assurance required by this chapter or conditions of approval
1171 of permit;

1172 3. Removal of the facilities by the Town in accordance with the procedures established under
1173 the Fairfax Municipal Code for abatement of a public nuisance at the owner's expense; or

1174 4. Any other remedies permitted under the Fairfax Municipal Code.

1175 C. **Summary removal.** In the event the zoning administrator determines that the condition or
1176 placement of a wireless telecommunications facility located in the public right-of-way constitutes a
1177 dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety,
1178 or determines other exigent circumstances require immediate corrective action (collectively, "exigent
1179 circumstances"), the zoning administrator may cause the facility to be removed summarily and
1180 immediately without advance notice or a hearing. Written notice of the removal shall be served upon
1181 the person who owns the facility within five business days of removal and all property removed shall
1182 be preserved for the owner's pick-up as feasible. If the owner cannot be identified following
1183 reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be
1184 treated as abandoned property.

1185 D. **Removal of facilities by Town .** In the event the Town removes a facility in accordance with
1186 nuisance abatement procedures or summary removal, any such removal shall be without any liability
1187 to the Town for any damage to such facility that may result from reasonable efforts of removal. In
1188 addition to the procedures for recovering costs of nuisance abatement, the Town may collect such
1189 costs from the performance bond posted and to the extent such costs exceed the amount of the
1190 performance bond, collect those excess costs in accordance with the Fairfax Municipal Code. Unless
1191 otherwise provided herein, the Town has no obligation to store such facility. Neither the permittee
1192 nor the owner nor operator shall have any claim if the Town destroys any such facility not timely
1193 removed by the permittee, owner, or operator after notice, or removed by the Town due to exigent
1194 circumstances.

1195 **19.04.230 Effect on Other Ordinances**

1196 Compliance with the provisions of this chapter shall not relieve a person from complying with any
1197 other applicable provision of the Fairfax Municipal Code, including but not limited to obtaining any
1198 necessary encroachment or building permits. In the event of a conflict between any provision of this
1199 chapter and other provisions of the Fairfax Municipal Code, this chapter shall control.

1200 **19.04.240 Effect of State or Federal Law**

1201 Notwithstanding any other provision of this Title to the contrary, the Town may grant an exception to
1202 any of the requirements of this title if it makes a finding that the applicant has demonstrated that the
1203 refusal of the Town to grant such an exception would prohibit or have the effect of prohibiting the
1204 provision of personal wireless services within the meaning of 47 USC §332(c)(7), or otherwise is
1205 preempted or prohibited by state or federal law.